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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, December 11, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–002–6]

RIN 0579–AC51

Importation of Nursery Stock; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on August 6, 2007, and effective on September 5, 2007, we amended the regulations governing the importation of nursery stock by making several changes, including allowing the importation of restricted articles in tissue culture medium that is not transparent or translucent. It was our intent that the amended regulations only allow the use of agar or agar-like tissue culture medium. In this amendment, we are amending the regulation to clarify that intent.

EFFECTIVE DATE: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on August 6, 2007, that was effective September 5, 2007 (72 FR 43503–43524, Docket No. 03–002–3), we amended the regulations governing the importation of nursery stock by making several changes, including allowing the importation of restricted articles in tissue culture medium that is not transparent or translucent. Before the effective date of the final rule, the regulations in paragraph (c) of § 319.37–8 had stated: "A restricted article growing solely in agar or in other transparent or translucent tissue culture medium may be imported established in such growing media." The final rule removed the words "transparent or translucent" from this sentence.

It was our intent to remove this restriction only for agar-like tissue culture media. In the proposed rule and final rule, we indicated that bacteria in a tissue culture medium that was not transparent or translucent would quickly reproduce and form a large mass that would be visible during inspection; such a bacterial mass would only be visible in agar-like tissue culture media. Before the final rule became effective, the restriction that any tissue culture media other than agar must be transparent or translucent had effectively restricted the use of tissue culture media other than agar to agar-like tissue culture media.

In removing the requirement that the tissue culture media be transparent or translucent, we neglected to specify that any tissue culture media other than agar should be similar to agar if a restricted article is intended to be imported established in growing media. This has created confusion among exporters. Therefore, we are amending paragraph (c) of § 319.37–8 to read:

"A restricted article growing solely in agar or in other agar-like tissue culture medium may be imported established in such growing media."

List of Subjects for 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–8 [Amended]

■ 2. In § 319.37–8, paragraph (c) is amended by adding the word "agar-like" before the word "tissue".

Done in Washington, DC, this 26th day of November 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–23282 Filed 11–29–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS 2007–0097]

Brucellosis in Cattle; State and Area Classifications; Idaho

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 brucellosis regulations concerning the interstate movement of cattle by changing the classification of Idaho from Class A to Class Free. We determined that Idaho met the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Idaho.

DATES: Effective on November 30, 2007, we are adopting as a final rule the interim rule published at 72 FR 40062–40064 on July 23, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Debbi A. Donch, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States

according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

In an interim rule [1] effective and published in the **Federal Register** on July 23, 2007 (72 FR 40062–40064, Docket No. APHIS–2007–0097), we amended the regulations by changing the classification of the State of Idaho from Class A to Class Free. That action relieved certain restrictions on the interstate movement of cattle from Idaho.

Comments on the interim rule were required to be received on or before September 21, 2007. We received one comment by that date, from a private citizen. This commenter did not, however, address the action taken in the interim rule (i.e., the change in Idaho's brucellosis classification).

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 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 72 FR 40062–40064 on July 23, 2007.

Done in Washington, DC, this 26th day of November 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–23254 Filed 11–29–07; 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/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0097.*

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 745, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772 and 774

[Docket No. 071114706–7725–01]

RIN 0694–AE19

Updated Statements of Legal Authority for the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule updates the Code of Federal Regulations (CFR) legal authority citations for the Export Administration Regulations (EAR) to: Replace citations to the President's Notice of October 27, 2006—*Continuation of Emergency Regarding Weapons of Mass Destruction* with the President's Notice of November 8, 2007 on the same subject, replace public law citations with United States Code citations, and remove outdated citations and to add one previously omitted citation. BIS is making these changes to keep the CFR legal authority citations for the EAR current and to comply with the Office of the Federal Register policy of using United States Code citations for statutory provisions that have been encoded into the United States Code. This rule makes no changes to the text of the EAR.

DATES: Effective Date: November 30, 2007.

ADDRESSES: Comments concerning this rule should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE19 in all comments, and in the subject line of email comments.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, *telephone*: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States posed by the proliferation of weapons of mass destruction. That emergency has been continued in effect by successive annual presidential notices. On November 8, 2007 the President issued a notice continuing that emergency for one year from November 14, 2007 (72 FR 63963, November 13, 2007). This rule revises the authority citations in the Code of Federal Regulations for parts 730, 734, 736, 742, 744 and 745 of the EAR to cite the notice of November 8, 2007 and to remove the citation to the President's notice of October 27, 2006 on the same topic.

This rule also revises the authority citations for all parts of EAR by removing citations to Presidential notice of August 3, 2006—*Continuation of Emergency Regarding Export Control Regulations*, because that notice has been superseded by a Presidential notice of August 15, 2007 that is cited in the authority citations for each part.

BIS is making the changes described in the preceding two paragraphs to keep the CFR authority citations for the EAR current.

This rule replaces the citations to Sec. 901–911, Public Law 106–387 and Sec 221 Public Law 107–56 with citations to 22 U.S.C. 7201 *et seq.* and 22 U.S.C. 7210, respectively, in the authority citations for parts 730, 738, 742, 744, 746 and 774. This rule replaces the citation to Sec. 901–911, Public Law 106–387 with a citation to 22 U.S.C. 7201 *et seq.* in the authority citations for part 740. This rule removes the citation to Public Law 108–75 from the authorities citations for part 730 because that list of citations contains a citation to 22 U.S.C. 2151 note, which is the U.S.C. citation for the provisions of Public Law 108–75 that provide authority for part 730. BIS is making the changes described in this paragraph to comply with the Office of the Federal Register policy of using United States Code citations for statutory provisions that have been encoded into the United States Code.

This rule adds a previously erroneously omitted citation to Executive Order 13222 to the authorities citations for part 743.

This rule makes no changes to the text of the EAR.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740, 748, 750, 752 and 758

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

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15 CFR Part 746 and 774

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15 CFR Part 747

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

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

15 CFR Part 768

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

■ Accordingly, parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 745, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772 and 774 of the EAR (15 CFR parts 700–774) are amended as follows:

[PART 730—AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825. 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

[PART 732—AMENDED]

■ 2. The authority citation for 15 CFR part 732 is revised to read as follows:

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

[PART 734—AMENDED]

■ 3. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

[PART 736—AMENDED]

■ 4. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 15, 2007, 72 FR 46137 (August 16.

2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

[PART 738—AMENDED]

■ 5. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 740—AMENDED]

■ 6. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 742—AMENDED]

■ 7. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

[PART 743—AMENDED]

■ 8. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* Pub. L. 106–508; 50 U.S.C. 1701 *et seq;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 744—AMENDED]

■ 9. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

[PART 745—AMENDED]

■ 10. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

[PART 746—AMENDED]

■ 11. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 747—AMENDED]

■ 12. The authority citation for 15 CFR part 747 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 748—AMENDED]

■ 13. The authority citation for 15 CFR part 748 is revised to read as follows:

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

[PART 750—AMENDED]

■ 14. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 752—AMENDED]

■ 15. The authority citation for 15 CFR part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 754—AMENDED]

■ 16. The authority citation for 15 CFR part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

[PART 756—AMENDED]

■ 17. The authority citation for 15 CFR part 756 is revised to read as follows:

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

[PART 758—AMENDED]

■ 18. The authority citation for 15 CFR part 758 is revised to read as follows:

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

[PART 760—AMENDED]

■ 19. The authority citation for 15 CFR part 760 is revised to read as follows:

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

[PART 762—AMENDED]

■ 20. The authority citation for 15 CFR part 762 is revised to read as follows:

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

[PART 764—AMENDED]

■ 21. The authority citation for 15 CFR part 764 is revised to read as follows:

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

[PART 766—AMENDED]

■ 22. The authority citation for 15 CFR part 766 is revised to read as follows:

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

[PART 768—AMENDED]

■ 23. The authority citation for 15 CFR part 768 is revised to read as follows:

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

[PART 770—AMENDED]

■ 24. The authority citation for 15 CFR part 770 is revised to read as follows:

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

[PART 772—AMENDED]

■ 25. The authority citation for 15 CFR part 772 is revised to read as follows:

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

[PART 774—AMENDED]

■ 26. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

Dated: November 26, 2007.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E7–23249 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 369

[Docket No. 1976N–0052T (formerly Docket No. 76N–052T)]

RIN 0910–AF33

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Rule for Over-the-Counter Antitussive Drug Products; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations (exemption for certain drugs limited by new-drug applications to prescription sale, and warning and caution statements required by regulations for drugs) by removing the entries for carbetapentane citrate. This action is associated with FDA's determination that carbetapentane citrate has not been shown to be effective at the over-the-counter (OTC) doses stated in the exempting regulation. FDA made this determination in 1987 as part of its ongoing review of OTC drug products.

DATES: This rule is effective November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5496, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 13, 1957 (22 FR 7315), FDA proposed to exempt carbetapentane citrate preparations from the prescription-dispensing requirements of section 503(b)(1)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (formerly 21 U.S.C. 353(b)(1)(C); currently 21 U.S.C. 353(b)(1)(B)). FDA stated:

- Evidence now available through investigation and marketing experience shows that drug products containing this ingredient can be safely used by the laity in self-medication if they are used in accordance with the proposed labeling and
- The restriction to prescription sale is no longer necessary for the protection of the public health.

FDA did not receive any comments on this proposal and published a final order (final rule) in the **Federal Register** of November 1, 1957 (22 FR 8812). FDA amended § 130.102 (21 CFR 130.102) by adding new paragraph (a)(20) with marketing conditions for OTC drug products containing carbetapentane citrate labeled for the temporary relief of cough. FDA subsequently recodified § 130.102(a)(20) as § 310.201(a)(20) (21 CFR 310.201(a)(20)).

As part of FDA's OTC drug review, the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) evaluated carbetapentane citrate and found it safe but lacking adequate effectiveness data for OTC antitussive use (41 FR 38312 at 38345, September 9, 1976). In the tentative final monograph for OTC antitussive drug products (48 FR 48576 at 48580, October 19, 1983), one comment objected to the Panel's effectiveness determination. FDA responded that it agreed with the Panel's conclusions that the data were insufficient to establish effectiveness. FDA did not receive any additional effectiveness data on carbetapentane citrate. In the final rule for OTC antitussive drug products (52 FR 30042, August 12, 1987), FDA classified carbetapentane citrate as nonmonograph (not generally recognized as safe and effective) for OTC antitussive use.

II. The Technical Amendment

Because carbetapentane citrate had not been shown to be effective at the OTC dosages stated in § 310.201(a)(20), FDA should have removed that paragraph from § 310.201 in 1987. The current final rule corrects that oversight by removing paragraph (a)(20) from § 310.201 and reserving paragraph (a)(20) for future use. In addition, the entry for "CARBETAPENTANE CITRATE PREPARATIONS" in § 369.21 (21 CFR 369.21) states: "(See Cough-Due-to-Cold Preparations.)" The entry for "'COUGH-DUE-TO-COLD' PREPARATIONS" entry states: "(CARBETAPENTANE CITRATE). (See § 310.201(a)(20) of this chapter.) 'Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away.'" Both of those entries also should have been removed in 1987, and the current final rule removes them.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et*

seq.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

FDA has determined that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As explained later in this document, the final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $127 million using the most current (2006) Implicit Price Deflator for the Gross Domestic Product.

The purpose of this final rule is to remove the exemption in § 310.201(a)(20) for carbetapentane citrate from the prescription-dispensing requirements of section 503(b)(1)(B) of the act and to remove two entries for carbetapentane citrate in § 369.21. FDA has reviewed its Drug Listing System and determined that there currently are no marketed OTC drug products that contain carbetapentane citrate. Therefore, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

FDA has determined under 21 CFR 25.31(a) 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.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that this rule does not contain policies 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. Any 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 occurred in 1987 when FDA classified carbetapentane citrate as not generally recognized as safe and effective for OTC antitussive use. States had the opportunity to comment at the time that final rule was published (52 FR 30042, August 12, 1987). Accordingly, FDA has concluded that this rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310 and 369 are amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

§ 310.201 [Amended]

■ 2. In § 310.201 remove and reserve paragraph (a)(20).

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

■ 3. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.21 [Amended]

■ 4. In § 369.21 remove the following entries:

"CARBETAPENTANE CITRATE PREPARATIONS. (See Cough-Due-to-Cold Preparations.)"

"'COUGH-DUE-TO-COLD'PREPARATIONS (CARBETAPENTANE CITRATE). (See § 310.201(a)(20) of this chapter.) 'Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away.'"

Dated: November 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23207 Filed 11–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 2005N–0017]

Medical Devices; Hematology and Pathology Devices: Reclassification of Automated Blood Cell Separator Device Operating by Centrifugal Separation Principle

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying from class III to class II the automated blood cell separator device operating by centrifugal separation principle and intended for the routine collection of blood and blood components. FDA is taking this action on its own initiative based on new information. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special controls for this device, as well as the special controls for the device with the same intended use but operating on a filtration separation principle.

DATES: This rule is effective December 31, 2007. The reclassification date is November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM–17), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115), and the Medical Device User Fee and Modernization Act (Public Law 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are as follows:

- Class I (general controls),
- Class II (special controls), and
- Class III (premarket approval).

Under the 1976 amendments, class II devices were defined as devices for which there was insufficient information to show that general controls themselves would provide reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, post-market surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendment devices, are classified after FDA:

1. Receives a recommendation from a device classification panel (an FDA advisory committee);
2. Publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and
3. Publishes a final regulation classifying the device.

FDA has classified most preamendments devices under these procedures.

1. Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless and until FDA reclassifies the device into class I or class II.
2. FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or
3. FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval.

The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed through premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(e) of the act governs reclassification of classified preamendments devices. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a preamendments device. The term "new information," as used in section 513(e)(1) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966)).

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951). Regardless of whether data before the agency are past or new data, the "new information" to support reclassification under section 513(e)(1) of the act must be "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which FDA relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c)).

Section 510(m) of the act (21 U.S.C. 360(m)) provides that FDA exempt a class II device from the premarket notification requirements under section 510(k) of the act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that an automated blood cell separator device operating by centrifugal separation principle should not be exempt from premarket notification under section 510(m) of the act because premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device.

II. Regulatory History of the Device

The automated blood cell separator device operating by centrifugal separation principle intended for the routine collection of blood and blood components is a preamendments device classified into class III.

In the **Federal Register** of March 10, 2005 (70 FR 11887), based on new information with respect to the device, FDA proposed, on its own initiative, to reclassify from class III to class II the automated blood cell separator device

operating by centrifugal separation principle, when the intended use of the device is for the routine collection of blood and blood components. Interested persons were invited to comment on the proposed rule by June 8, 2005. FDA received one comment on the proposed rule and draft guidance and that comment was considered as the rule and guidance were finalized.

Also, FDA is correcting a regulatory citation in the proposed rule of March 10, 2005 (70 FR 11887), on page 11892, in the first column, starting in the second line; "21 CFR 803.50(b)(2)" is corrected to read "21 CFR 803.50(b)(3))".

FDA also identified the draft guidance entitled "Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle" as the proposed special controls capable of providing reasonable assurance of safety and effectiveness for these devices.

III. Summary of Final Rule

Under section 513(e) of the act and § 860.130 (21 CFR 860.130), based on new information and on its own initiative, FDA is reclassifying from class III to class II (special controls) the automated blood cell separator device operating by centrifugal separation principle and intended for the routine collection of blood and blood components. The special controls in conjunction with general controls will provide reasonable assurance of the safety and effectiveness of the device. For all other uses, including therapeutic apheresis, the device remains in its current classification as class III. All therapeutic apheresis (blood cell separator) devices are regulated by the Center for Devices and Radiological Health and are not part of § 864.9245 (21 CFR 864.9245).

The automated blood cell separator device operating by centrifugal separation principle is assigned the generic name, automated blood cell separator. It is identified as a device that automatically withdraws whole blood from a donor, separates the blood into components, retains one or more components, and returns the remainder of the blood to the donor. This final rule removes reference in § 864.9245, to the words that were in parentheses, specifically, red blood cells, white blood cells, plasma, and platelets. The components obtained are transfused or used for further manufacturing. The separation bowls of centrifugal blood cell separators may be reusable or disposable, as specified by the device manufacturer.

Also in this rule, we are removing from § 864.9245(b), the list of special controls for the class II automated blood cell separator device operating by filtration separation principle and intended for the routine collection of blood and blood components. The special controls guidance entitled "Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Principle" will provide the special controls for both filtration- and centrifugal-based automated blood cell separator devices intended for the routine collection of blood and blood components. The availability of this guidance is announced elsewhere in this issue of the **Federal Register**.

The special controls guidance document recommends that the manufacturer file with FDA for 3 consecutive years an annual report on the anniversary date of the final rule for reclassification or on the anniversary date of 510(k) clearance. Each annual report should include, at a minimum, the following information:

- A summary of anticipated and unanticipated donor adverse events that have occurred and that are not required to be reported by manufacturers under part 803 (21 CFR part 803) Medical Device Reporting (MDR);
- Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act;
- Any subsequent change to the preamendments class III device requiring a 30-day notice in accordance with § 814.39(f) (21 CFR 814.39(f)).

For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the type of device is not exempt from premarket notification requirements. Prior to marketing the device, persons must submit to FDA a premarket notification containing information about the automated blood cell separator device they intend to market. Following the effective date of this final rule, any firm submitting a 510(k) premarket notification for an automated blood cell separator device operating by filtration or centrifugal separation principle and intended for the routine collection of blood and blood components will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

IV. Analysis of Comments on the Proposed Rule and FDA's Response

FDA received one comment on the proposed rule. The comment supported the reclassification of the automated blood cell separator device operating by centrifugal separation principle and intended for the routine collection of blood and blood components. In addition, the comment provided specific questions about the reporting requirements in the special controls guidance document and asked FDA to clarify these reporting requirements.

We first provide a general response to the comment and then respond to the questions submitted in the comment. To make it easier to identify the questions provided in the comment and our responses, the word "Comment," in parentheses, will appear before the description of the question, and the word "Response," in parentheses, will appear before our response. We numbered the comments to distinguish the questions.

When the device is reclassified, all manufacturers of currently marketed automated blood cell separators operating by centrifugal separation principle not approved under the premarket approval process should file annual reports for 3 consecutive years on the anniversary date of reclassification of the device from class III to class II, or on the anniversary date of the 510(k) clearance. Within the 3-year reporting period, any subsequent change to the device requiring a 510(k) should be included in the annual report. The criteria for reporting changes to the device and its labeling under 510(k) are delineated in FDA's guidance "Deciding When to Submit a 510(k) for a Change to an Existing Device," January 10, 1997.

However, manufacturers of automated blood cell separator devices operating by filtration separation principle that were classified into class II (68 FR 9530, February 28, 2003) were subject to the special controls of § 864.9245 issued in 2003, requiring 3 consecutive years of submitting annual reports. These devices are not required to initiate another cycle of annual reports as a result of the change of special controls for those devices codified by this rule.

Under §§ 606.160(b)(1)(iii) and 606.170 (21 CFR 606.160(b)(1)(iii) and 606.170), the facility using the device to collect blood and blood components is required to keep records of donor adverse reaction complaints and reports, including results of all investigations

and followup. Under § 803.50(b)(3), manufacturers are responsible for conducting an investigation of each event and evaluating the cause of the event. The special controls would have the manufacturer summarize this information and submit it to FDA in the annual report.

Specific questions submitted in the comment and FDA's responses:

(Comment 1) Do you intend to request 3-year annual reporting only for the initial 510(k) clearance for the automated blood cell separator device?

(Response) Yes. The 3-year annual reporting described in the special controls guidance document recommends annual reporting only for the initial 510(k) clearance. Any subsequent change to the device within this 3-year reporting period requiring the submission of a premarket notification in accordance with section 510(k) of the act should be included in the annual report. However, the submission of this 510(k) information concerning a change to the device would not restart the 3-year reporting period.

(Comment 2) Is it correct that for a device originally approved under the PMA process, then switched to a 510(k), annual reporting would not be required?

(Response) Yes, this is correct, if an automated blood cell separator device intended for the routine collection of blood and blood components was originally approved under the PMA process.

(Comment 3) Does this reporting requirement apply to all automated blood cell separator devices operating by centrifugal or filtration separation principle intended for the routine collection of blood and blood components regardless of when the original clearance was granted? Would any preamendments devices be "grandfathered" in so that the reporting would not be required?

(Response) The reporting recommended in the special controls guidance applies to currently marketed products not approved under the PMA process. The 3-year annual reporting for these products should begin on the anniversary date of the device reclassification from class III to class II, or, on the anniversary date of 510(k) clearance.

In this rulemaking, we are reclassifying the automated blood cell separator device operating by centrifugal separation principle from class III to class II. Therefore, the reclassification date from class III to class II for the automated blood cell separator device operating by centrifugal separation principle and intended for the routine collection of blood and blood components is the date of publication in the **Federal Register** of this final rule (see **DATES**). The reclassification date from class III to class II for the automated blood cell separator device operating by filtration separation principle and intended for the routine collection of blood and blood components is February 28, 2003.

Devices in commercial distribution before May 28, 1976, are also referred to as preamendments devices. On September 12, 1980 (45 FR 60643), FDA issued a final rule classifying these preamendment automated blood cell separator devices as class III (premarket approval). The 1976 amendments did not immediately subject preamendment devices classified in class III to the preamendment process. In the regulation (§ 864.9245), FDA did not set a deadline for the submission of premarket approval applications for the device. That regulation is amended in this rulemaking to reclassify the device from class III to class II. Therefore, preamendments devices are subject to this rulemaking, and the special controls guidance document as of the anniversary date of device reclassification from class III to class II.

V. FDA's Conclusion

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based (70 FR 11887 at 11890). FDA is also adopting the risks to public health stated in the proposed rule (70 FR 11887 at 11891). Furthermore, FDA is issuing a final rule that revises § 864.9245, thereby, reclassifying the generic type of device, automated blood cell separator operated by centrifugal separation principle and intended for the routine collection of blood and blood components from class III into class II.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The reclassification of automated blood cell separator devices from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Although the special controls guidance document recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this is less burdensome than the current premarket approval requirements, including the submission of periodic reports (21 CFR 814.84). By eliminating the need for premarket approval applications, reclassification will reduce regulatory costs with respect to these devices, impose no significant economic impact on any small entities, and may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) is not required. FDA concludes that the special controls guidance document contains information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled "Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal of Filtration Separation Principle." The notice contains an analysis of the paperwork burden for the guidance.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 864.9245 is revised to read as follows:

§ 864.9245 Automated blood cell separator.

(a) *Identification.* An automated blood cell separator is a device that uses a centrifugal or filtration separation principle to automatically withdraw whole blood from a donor, separate the whole blood into blood components, collect one or more of the blood components, and return to the donor the remainder of the whole blood and blood components. The automated blood cell separator device is intended for routine collection of blood and blood components for transfusion or further manufacturing use.

(b) *Classification.* Class II (special controls). The special control for this device is a guidance for industry and FDA staff entitled "Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle."

Dated: November 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23285 Filed 11–29–07; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends Appendix D to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2008. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan administrators, participants and beneficiaries of the increased maximum guarantee amount for 2008.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]." This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Appendix D to part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to Appendix D to part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $75,900 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2008. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR 4022.22(b) is: $750 multiplied by $75,900/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2008 is $4,312.50 per month in the form of a life annuity beginning at age 65. This amendment updates Appendix D to part 4022 to add this maximum guaranteeable amount for plans that terminate in 2008. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $4,312.50 per month.)

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2008 maximum guaranteeable benefit amounts for the information of the public.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this

regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. Appendix D to part 4022 is amended by adding a new entry to the end of the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix D to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
2008	$4,312.50

Issued in Washington, DC, this 27th day of November, 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–23267 Filed 11–29–07; 8:45 am]

BILLING CODE 7709–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2008, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–07 with Table I–08 in order to provide an updated correlation, appropriate for calendar year 2008, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–08 will be used to value benefits in plans with valuation dates during calendar year 2008.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2008, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2008.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I–07 and

adding in its place Table I–08 to read as follows:

Appendix D to Part 4044—Tables Used to Determine Expected Retirement Age

TABLE I–08.—SELECTION OF RETIREMENT RATE CATEGORY

[(For Plans with valuation dates after December 31, 2007, and before January 1, 2009)]

Participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit at URA is greater than—
		From	To	
2009	536	536	2,264	2,264
2010	549	549	2,320	2,320
2011	563	563	2,376	2,376
2012	576	576	2,430	2,430
2013	589	589	2,486	2,486
2014	602	602	2,544	2,544
2015	616	616	2,602	2,602
2016	630	630	2,662	2,662
2017	645	645	2,723	2,723
2018 or later	660	660	2,786	2,786

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 27th day of November, 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–23270 Filed 11–29–07; 8:45 am]

BILLING CODE 7709–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2006–2 CRB NCBRA]

Noncommercial Educational Broadcasting Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the royalty rates and terms under the Copyright Act for the noncommercial educational broadcasting statutory license for the license period 2008–2012.

DATES: *Effective Date:* January 1, 2008.

Applicability Date: The regulations apply to the license period January 1, 2008 through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR part 253. However, the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges ("Judges"). 17 U.S.C. 801(b)(1). This is a window year for the establishment of new rates and terms for the 2008–2012 license period.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing the commencement of proceedings under 17 U.S.C. 118 and requesting interested parties to submit their petitions to participate. 71 FR 1453 (January 9, 2006). Petitions to participate were received from: The American Council on Education ("ACE"); the National Music Publishers Association, Inc. ("NMPA"); the Harry Fox Agency ("HFA"); the National Religious Broadcasters Noncommercial Music License Committee ("NRBNMLC"); Royalty Logic, Inc., the American Society of Composers, Authors and Publishers ("ASCAP"); Broadcast Music, Inc. ("BMI"); SESAC, Inc.; National Public Radio ("NPR"); the Corporation for Public Broadcasting ("CPB"); the Public Broadcasting Service ("PBS"); and the Church Music Publishers Association. The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than January 20, 2007. Instead of written direct statements, the parties submitted notification of settlements and proposed rates and terms for the Judges to adopt.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

> (i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on April 17, 2007, the Judges published a Notice of Proposed Rulemaking ("NPRM") requesting comment on the

proposed rates and terms, with certain modifications, submitted to the Judges as part of a joint proposal by the following parties: ACE, ASCAP, BMI, HFA, NMPA, NPR, NRBNMLC, PBS, and SESAC. 72 FR 19138 (April 17, 2007). Comments were due by May 17, 2007.

In response to the NPRM, the Judges received only one comment, which was jointly submitted by NPR and PBS, stating that there had been an inadvertent error in the joint proposal with respect to some of the NPR and PBS proposed royalty rates, thereby making the rates proposed in § 381.7(b)(1)(i) incorrect. Comments of NPR and PBS, filed May 15, 2007, at 2. They then set out the intended rates. *Id.*

Consequently, as required by section 801(b)(7)(A), the Judges published a second NPRM requesting comment on the rates correcting those previously proposed in § 381.7(b)(1)(i). 72 FR 54623 (September 26, 2007) and 72 FR 57101 (October 5, 2007). Comments were due by October 26, 2007. In response to this NPRM, the Judges received one comment from the organization Students for a Democratic Society. The comment stated that "in some cases these royalties might be restrictive" and that royalties may be paid "for something that (perhaps) is in fact Fair Use." Comment submitted by Students for a Democratic Society on September 26, 2007. However, there was no indication that this organization would be bound by the proposed rates and terms or that it was prepared to participate in further proceedings to establish rates and terms for the section 118 license.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the section 118 statutory license for the period 2008–2012.

Cost of Living Adjustment

The regulations adopted today require that on December 1 of each year, starting with 2007, the Judges publish a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to the previous notice,[1] to the most recent Index published prior to December 1 of that year. 37 CFR 381.10(a). The regulations also require the Judges to publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertoires by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 381.10(b). However, the rate for SESAC set forth in § 381.5(c)(4) is the rate, without any adjustment, to be paid to SESAC for calendar year 2008. This rate will be subject to an annual cost of living adjustment each year thereafter for calendar years 2009 through 2012. *See* Joint Proposal of SESAC, Inc. and the American Council of Education at 2 (filed January 26, 2007). Therefore, the Copyright Royalty Judges are announcing the change in the Consumer Price Index and performing the required cost of living adjustment only to the rates for ASCAP and BMI set out in §§ 381.5(c)(1) and (c)(2) in the April 17 NPRM. *See* 72 FR 19140.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 2006, to the most recent Index published before December 1, 2007, is 3.5% (2006's figure was 201.8; the figure for 2007 is 208.936, based on 1982–1984 = 100 as a reference base). Rounding off to the nearest dollar, the royalty rate for the use of musical compositions in each of the repertoires of ASCAP and BMI is $287.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding Part 381 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

Sec.

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2008, and ending on December 31, 2012. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term *public broadcasting entity* means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.3 [Reserved]

§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements.

(a) *Determination of royalty rate.* (1) For performance of such work in a feature presentation of PBS:	
2008–2012	$227.58
(2) For performance of such a work as background or theme music in a PBS program:	
2008–2012	$57.66
(3) For performance of such a work in a feature presentation of a station of PBS:	
2008–2012	$19.45
(4) For performance of such a work as background or theme music in a program of a station of PBS:	
2008–2012	$4.10
(5) For the performance of such a work in a feature presentation of NPR:	

[1] The last cost of living adjustment was published on December 1, 2006. *See* 71 FR 69486.

2008–2012	$23.07
(6) For the performance of such a work as background or theme music in an NPR program:	
2008–2012	$5.59
(7) For the performance of such a work in a feature presentation of a station of NPR:	
2008–2012	$1.63
(8) For the performance of such a work as background or theme music in a program of a station of NPR:	
2008–2012	$.58

(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP, BMI or SESAC covering the license period January 1, 2008, to December 31, 2012, to provide a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of four years following the first performance.

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, $287 annually.

(2) For all such compositions in the repertory of BMI, $287 annually.

(3) For all such compositions in the repertory of SESAC, $116 annually.

(4) For the performance of any other such compositions: $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

§ 381.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel ("IBOC") digital radio signal and such programming is different than the station's analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	$ 550	$ 567	$ 583	$ 601	$ 619
Level 2	250,000–499,999	1,000	1,030	1,061	1,093	1,126
Level 3	500,000–999,999	1,500	1,545	1,591	1,639	1,688
Level 4	1,000,000–1,499,999	2,000	2,060	2,122	2,185	2,251
Level 5	1,500,000–1,999,999	2,500	2,575	2,652	2,732	2,814
Level 6	2,000,000–2,499,999	3,000	3,090	3,183	3,278	3,377
Level 7	2,500,000–2,999,999	3,500	3,605	3,713	3,825	3,939
Level 8	3,000,000 and above	5,000	5,150	5,305	5,464	5,628

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	$ 550	$ 567	$ 583	$ 601	$ 619
Level 2	250,000–499,999	1,000	1,030	1,061	1,093	1,126
Level 3	500,000–999,999	1,500	1,545	1,591	1,639	1,688
Level 4	1,000,000–1,499,999	2,000	2,060	2,122	2,185	2,251
Level 5	1,500,000–1,999,999	2,500	2,575	2,652	2,732	2,814
Level 6	2,000,000–2,499,999	3,000	3,090	3,183	3,278	3,377
Level 7	2,500,000–2,999,999	3,500	3,605	3,713	3,825	3,939
Level 8	3,000,000 and above	5,000	5,150	5,305	5,464	5,628

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	$ 120	$ 124	$ 127	$ 131	$ 135
Level 2	250,000–499,999	200	206	212	219	225
Level 3	500,000–999,999	300	309	318	328	338
Level 4	1,000,000–1,499,999	400	412	424	437	450
Level 5	1,500,000–1,999,999	500	515	530	546	563
Level 6	2,000,000–2,499,999	600	618	637	656	675
Level 7	2,500,000–2,999,999	700	721	743	765	788
Level 8	3,000,000 and above	1,000	1,030	1,061	1,093	1,126

(4) For the performance of any other such compositions, in 2008 through 2012, $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 10 stations to furnish such reports.

(f) *Definitions.* As used in paragraphs (c) and (d) of this section, the following terms and their variant forms mean the following:

(1) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a stations Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator Station or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator Station or a Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(2) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(3) *Translator Station and Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

§ 381.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2008–2012
(A) Feature	$114.09
(B) Concert feature (per minute)	34.26
(C) Background	57.66
(D) Theme:	
(1) Single program or first series program	57.66

	2008–2012
(2) Other series program	23.41

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2008–2012
(A) Feature	$9.43
(B) Concert feature (per minute)	2.48
(C) Background	4.10
(D) Theme:	
(1) Single program or first series of program	4.10
(2) Other series program	1.63

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule "National Public Radio" programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2008–2012
(i) Feature	$12.35
(ii) Concert feature (per minute)	18.13
(iii) Background	6.19
(iv) Theme:	
(A) Single program or first series program	6.19
(B) Other series program	2.47

(3) For purposes of this schedule, a "Concert Feature" shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance, or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2008–2012
(i) Feature	$.79
(ii) Feature (concert) (per half hour)	1.65
(iii) Background	.40

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2012, shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates.* The required royalty rates shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use*—(1) *Maintenance of cue sheets.* PBS and its stations, NPR, or other public broadcasting entities shall maintain and make available for examination pursuant to paragraph (e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) *Content of cue sheets or summaries.* Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Judges. Deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD–ROM, CD–R or CD–RW) or floppy

diskette of their standard music cue sheets or summaries of same listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Royalty Judges upon their request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	2008–2012
(A) For featured display of a work	$69.70
(B) For background and montage display	33.99
(C) For use of a work for program identification or for thematic use	137.40
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	45.14

(ii) For such uses in other than PBS-distributed programs:

	2008–2012
(A) For featured display of a work	$45.14
(B) For background and montage display	23.13
(C) For use of a work for program identification or for thematic use	92.27
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	23.14

(2) For the purposes of the schedule in paragraph (b)(1) of this section the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(3) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".

(4) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(5) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Royalty Judges.* (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD–ROM, CD–R or CD–RW) or floppy diskette of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar

year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2012, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

§ 381.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust funds.

§ 381.10 Cost of living adjustment.

(a) On or before December 1, 2007, the Copyright Royalty Judges shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2006, to the most recent Index published prior to December 1, 2007. On each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the **Federal Register** a revised schedule of rates for § 381.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for rates for § 381.5 shall become effective thirty days after publication in the **Federal Register**.

§ 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

Dated: November 23, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7–23145 Filed 11–29–07; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 409

[CMS–1545–CN2]

RIN 0938–AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections

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

ACTION: Final rule; correction notice.

SUMMARY: This document corrects technical errors that appeared in the August 3, 2007 **Federal Register**, entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008; Final Rule."

DATES: *Effective Date:* This correction is effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 2007, we published a correction notice (FR Doc. E7–18732, 72 FR 55085) to correct a number of technical errors that appeared in the FY 2008 Skilled Nursing Facility Prospective Payment System (SNF PPS) final rule on August 3, 2007 (FR Doc. 07–3784, 72 FR 43412). In this notice, we are correcting certain technical errors in the wage index values, which have been recently identified. Specifically, we have determined that in the process of developing the most recent hospital wage index, an inpatient hospital provider was inadvertently assigned to the wrong Core-Based Statistical Area (CBSA). This provider was incorrectly located in CBSA 16180 (Carson City, NV) instead of CBSA 39900 (Reno-Sparks, NV). Accordingly, we are revising the wage index values for CBSA 16180 Carson City, NV from 0.9353 to the corrected value of 1.0003. Similarly, we are revising the wage index value for CBSA 39900 Reno-Sparks, NV from 1.0959 to the corrected value of 1.0715. As we are revising the entries for only these two particular CBSAs, we are not republishing the lengthy Table 8, "FY 2008 Wage Index for Urban Areas Based on CBSA Labor market Areas," in its entirety in this notice. We note that the corrected version of this table is available online on the SNF PPS website, at *http://www.cms.hhs.gov/SNFPPS/04_WageIndex.asp*.

The corrections in this document appear below in the "Correction of Errors" section. The provisions in this correction notice are effective as of January 1, 2008.

II. Correction of Errors

In FR Doc. 07–3784 (72 FR 43412), make the following corrections:

1. On page 43441, in column 3 ("Wage Index") of Table 8, "Wage Index for Urban Areas Based on CBSA Labor Market Areas", the entry "0.9353" for CBSA 16180 Carson City, NV is corrected to read "1.0003".

2. On page 43455, in column 3 ("Wage Index") of Table 8, "Wage Index for Urban Areas Based on CBSA Labor Market Areas", the entry "1.0959" for CBSA 39900 Reno-Sparks, NV is corrected to read "1.0715".

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive the notice and comment procedure if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the FY 2008 SNF PPS final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the update notice is unnecessary and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 19, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E7–23219 Filed 11–29–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 455

[CMS–2264–F]

RIN 0938–AO88

Medicaid Integrity Program; Limitation on Contractor Liability

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

ACTION: Final rule.

SUMMARY: The Medicaid Integrity Program (the Program) provides that the Secretary promote the integrity of the Medicaid program by entering into contracts with contractors that will review the actions of individuals or entities furnishing items or services (whether fee-for-service, risk, or other basis) for which payment may be made under an approved State plan and/or any waiver of the plan approved under section 1115 of the Social Security Act; audit claims for payment of items or services furnished, or administrative services furnished, under a State plan; identify overpayments of individuals or entities receiving Federal funds; and educate providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care. This final rule will provide for limitations on a contractor's liability while performing these services under the Program.

The final rule will, to the extent possible, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1157 (Limitation on Liability) of the Social Security Act.

DATES: *Effective Date:* These regulations are effective on December 31, 2007.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Law

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

B. Medicaid Integrity Program

Section 6034 of the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171, enacted on February 8, 2006) amended title XIX of the Social Security Act (the Act), (42 U.S.C. 1396 *et seq.*) by redesignating the old section 1936 as section 1937; and inserting the new section 1936 to combat Medicaid fraud and abuse. For the first time, the Program authorizes the Federal Government to directly identify, recover, and prevent inappropriate Medicaid payments. It will also support the efforts of the State Medicaid agencies through a combination of oversight and technical assistance.

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

The new section 1936 of the Act states that the Secretary shall promote the integrity of the Medicaid program by entering into contracts with eligible entities to carry out the following activities:

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

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

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

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

Section 1936 of the Act also provides that the Secretary will, by regulation, provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Medicaid Integrity Program.

II. Provisions of the Proposed Regulation and Response to Comments

Limitations on Contractor Liability

Section 6034 of the Deficit Reduction Act of 2005 amended title XIX of the Act by establishing, under the new section 1936, the Medicaid Integrity Program to promote the integrity of the Medicaid program by authorizing the Centers for Medicare & Medicaid Services (CMS) (on behalf of the Secretary) to enter into contracts with contractors that will (1) review the actions of individuals or entities

furnishing items or services (whether fee-for-service, risk, or other basis) for which payment may be made under an approved State plan and/or any waiver of the plan approved under section 1115 of the Social Security Act; (2) audit claims for payment of items or services furnished, or administrative services rendered, under a State plan; (3) identify overpayments to individuals or entities receiving Federal funds under title XIX; and (4) educate providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care. This final rule will set forth limitations on a contractor's liability while performing these services under the Program.

Contractors that perform activities under the Program will be reviewing activities of providers and others seeking Medicaid payment for providing services to Medicaid beneficiaries. In an effort to reduce or eliminate the Program contractors' exposure to possible legal action from entities they review, section 1936 of the Act requires that we, by regulation, limit the Program contractor's liability for actions taken in carrying out its contract. We must establish, to the extent we find appropriate, standards and other substantive and procedural provisions that are the same as, or comparable to, those contained in section 1157 of the Act.

Section 1157 of the Act provides that any organization having a contract (under Title XI, Part B of the Act) with the Secretary, as well as its employees, fiduciaries, and anyone who furnishes professional services to such an organization, is/are protected from civil and criminal liability in performing its duties under the Act or its contract, provided these duties are performed with due care.

In the July 20, 2007 **Federal Register** (72 FR 39766), we published the proposed rule entitled, "Medicaid Integrity Program; Limitation on Contractor Liability," and provided for a 30-day public comment period. We received a total of 1 timely comment from a health care association. The comment questioned the proposed provisions and we responded with further clarification in our response. Brief summaries for each proposed provision, a summary of the public comments we received, and our responses to comments, are set forth below.

General Comments

Comment: A commenter expressed concern that CMS has not provided the health care community or the public any information about the federal government's discussions on the Program's contractors, termed Medicaid Integrity Contractor's, (MIC) roles, responsibilities, and qualifications. The commenter also stated the MICs may not understand state-specific payment methodologies, resulting in a significant learning curve. The commenter also expressed concern that a lack of public information about the capabilities of the contractors prevents the transparency which all federal government programs should strive to achieve.

Response: We appreciate the commenter's concerns regarding information sharing and transparency, as well as the concern that the MICs may face a significant learning curve in developing a knowledge base and experience regarding state-specific practices. To address these concerns, we have been working aggressively with our state and federal partners and stakeholders (State Medicaid Directors, State Program Integrity Directors, Medicaid Fraud Control Unit Directors, the Federal Bureau of Investigation, and HHS' Office of Inspector General) to share information and to obtain their input on our planning efforts. We have also presented information regarding both the Program and MICs at conferences of national and regional associations, including the National Association of State Medicaid Directors and the National Association for Medicaid Program Integrity. To address the MICs' potential learning curve, we have engaged strategic development contractors to help us build upon the tools and expertise we already have. These strategic contractors are assisting by developing state program integrity profiles, and developing audit protocols, methodologies, and standards for the MICs to use. These tools will establish a solid knowledge baseline for the MICs, enabling them to get off to an aggressive, well-informed start. Moreover, we strive to inform the public about our mission and accomplishments, and encourage interested parties to utilize CMS' internet site to learn more about Medicaid program integrity generally at: *http://www.cms.hhs.gov/MCAIDFraudAbuseGenInfo/*, and more specific information about the CMS' Medicaid integrity implementation plan and efforts at: *http://www.cms.hhs.gov/DeficitReductionAct/Downloads/CMIPupdateaugust2007final.pdf*.

Section 455.1 Basis and Scope

The proposed rule, in § 455.1, Basis and scope, added a new paragraph (c) stating that subpart C implements section 1936 of the Act. Section 1936 of the Act establishes the Medicaid Integrity Program under which the Secretary will promote the integrity of the program by entering into contracts with eligible entities to carry out the activities under subpart C. We did not receive public comments on this provision, therefore we adopt the provision as final.

Subpart C—Medicaid Integrity Program

Section 455.200 Basis and Scope

In § 455.200(a), we set forth the proposed statutory basis which would implement section 1936 of the Act, which states that the Secretary will promote the integrity of the Medicaid program by entering into contracts with eligible entities to carry out the activities under subpart C. In § 455.200(b) we proposed the scope for the limitation on a contractor's liability to carry out a contract under the Medicaid Integrity Program as proposed under new § 455.202. We did not receive public comments on this provision; therefore we adopt the provision as final.

Section 455.202 Limitation on Contractor Liability

We proposed in § 455.202 to protect Program contractors from liability in the performance of their contracts provided they carry out their contractual duties with due care.

Comment: A commenter questioned the proposed standard for the MICs which states they will be protected from civil and criminal liability in performing their duties so long as they perform these duties with "due care." The commenter expressed that under such a standard, the Federal Government cannot sufficiently ensure that the MICs will be held adequately accountable for their actions.

Response: As explained in the proposed rule, we believe that the due care standard specified in § 455.202 is the only standard consistent with the statutory mandate of the Act. Section 1936 of the Act require us to limit a contractor's liability by employing the same or comparable standards and provisions as are contained in section 1157 of the Act. Section 1157 of the Act limits a contractor's liability under a due care standard. We believe that applying this standard to the MICs strikes a reasonable balance between the concerns of the contractors and those subject to the contractors' review. We further believe the MICs will operate with due care to avoid liability, and those being reviewed have the assurance that they have legal recourse if a contractor fails to abide by that standard.

Alternative Standards of Liability Considered

In accordance with section 1936 of the Act, we proposed to employ the same standards for payment of legal expenses as are contained in section 1157(d) of the Act. Therefore, in § 455.202(b) we proposed that we make payment to Program contractors, their members, employees, and anyone who provides legal counsel or services to them, for expenses incurred in the defense of any legal action related to the performance of the Program contract. We also proposed that any and all payment(s) and the amount of each payment(s) if any, will be determined exclusively by us, and conditioned upon (1) the reasonableness of the expense(s); (2) the amount of government funds available for payment(s); and (3) whether the payment(s) is(are) allowable under the terms of the contract.

In § 455.202, we considered employing a standard for the limitation of liability other than the due care standard. We considered whether it would be appropriate to provide that a contractor would not be civilly liable by reason of the performance of any duty, function, or activity under its contract provided the contractor was not grossly negligent in that performance. However, section 1936 of the Act requires that we employ the same or comparable standards and provisions as are contained in section 1157 of the Act. This approach is consistent with a similar approach taken in the Medicare Integrity Program (72 FR 48870), which has virtually identical statutory limitations on contractor liability language. Therefore, we did not believe that it would be appropriate to expand the scope of immunity to a standard of gross negligence, as it would not be a comparable standard to that set forth in section 1157(b) of the Act.

III. Provisions of the Final Rule

In this final rule we are adopting the provisions as set forth in the July 20, 2007 proposed rule (72 FR 39776) as final.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

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

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

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

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

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

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

List of Subjects in 42 CFR Part 455

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

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

PART 455—PROGRAM INTEGRITY; MEDICAID

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

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

■ 2. In § 455.1, add new paragraph (c) to read as follows:

§ 455.1 Basis and scope.

* * * * *

(c) Subpart C implements section 1936 of the Act. It establishes the Medicaid Integrity Program under which the Secretary will promote the integrity of the program by entering into contracts with eligible entities to carry out the activities of subpart C.

■ 3. New subpart C, consisting of § 455.200 and § 455.202, is added to part 455 to read as follows:

Subpart C—Medicaid Integrity Program

Sec.
455.200 Basis and scope.
455.202 Limitation on contractor liability.

Subpart C—Medicaid Integrity Program

§ 455.200 Basis and scope.

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

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

§ 455.202 Limitation on contractor liability.

(a) A program contractor, a person, or an entity employed by, or having a fiduciary relationship with, or who furnishes professional services to a program contractor will not be held to have violated any criminal law and will not be held liable in any civil action, under any law of the United States or of any State (or political subdivision thereof), by reason of the performance of any duty, function, or activity required or authorized under this subpart or under a valid contract entered into under this subpart, provided due care was exercised in that performance and the contractor has a contract with CMS under this subpart.

(b) CMS pays a contractor, a person, or an entity described in paragraph (a) of this section, or anyone who furnishes legal counsel or services to a contractor or person, a sum equal to the reasonable amount of the expenses, as determined by CMS, incurred in connection with the defense of a suit, action, or proceeding, if the following conditions are met:

(1) The suit, action, or proceeding was brought against the contractor, person or entity by a third party and relates to the contractor's, person's or entity's performance of any duty, function, or activity under a contract entered into with CMS under this subpart.

(2) The funds are available.

(3) The expenses are otherwise allowable under the terms of the contract.

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

Dated: September 27, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 9, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7–23217 Filed 11–29–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1541–CN2]

RIN 0938–AO32

Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008; Corrections

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

ACTION: Final rule with comment period; correction notice.

SUMMARY: This document corrects typographical and technical errors that appeared in the August 29, 2007 **Federal Register**, entitled "Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008."

EFFECTIVE DATE: This correction notice is effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Sharon Ventura, (410) 786–1985.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 07–4184 of August 29, 2007 (72 FR 49762) contained several typographical and technical errors that this notice serves to identify and correct.

II. Summary of Errors

On page 49773, in the second paragraph of the third column, the reference to the McCall report is incomplete. We are correcting the error by providing the complete reference.

In the first column on page 49774, we are clarifying and correcting an erroneous reference to certain V codes in our response to a comment.

In the first full paragraph of the first column on page 49775, we inadvertently imply that a table is included in the August 29, 2007 final rule. However, the referenced table is found in the May 4, 2007 proposed rule. We are correcting this by referencing the proposed rule.

On page 49780, the example in column 1 is revised to reflect the updates made to Table 2A in the final rule with comment period.

On page 49789, in the fourth column of Table 2B, the Short Descriptions of ICD–9–CM codes 161, 162, 163, 164, and 165 incorrectly contain asterisks.

On page 49793, in Table 2B, the ICD–9–CM code 321.8, we inadvertently did not include an 'M' next to it under the column titled, "Manifestation codes" in order to properly identify it as a manifestation code.

To more accurately reflect ICD–9–CM coding terminology, we are correcting the Diagnostic Category titles for ICD–9–CM codes V55.0 and V55.5 on page 49817 of Table 2B. In addition we are correcting the Diagnostic Category titles for ICD–9–CM codes V55.5, V55.0, and V55.6 and the Short Descriptions for ICD–9–CM codes V55.5 and V55.0 on page 49855 of Table 10B.

During production of Table 4 on pages 49826 through 49827, the decimal amounts were incorrectly rounded when computing the scaled coefficients. We are revising Table 4 to reflect the corrected rounded amounts.

The average cost amounts in Table 5 on pages 49828 through 49832 were also rounded incorrectly. Therefore, we are revising Table 5 to reflect the average cost of each case-mix group. There are no changes to the relative weights in Table 5.

On page 49833, second paragraph, a negative sign was inadvertently placed before "8.7 percent."

On page 49844, we incorrectly stated the acronym for the Health Insurance Prospective Payment System (HIPPS) code. The correct acronym is HIPPS. We are correcting the acronym to HIPPS wherever it appears.

On page 49853 the description for Item #5 for selected skin conditions in Table 10A incorrectly includes the words "or other". Also on page 49853, in the first column of the Note section for Table 10A, we are correcting punctuation errors. Therefore, in the second column of the Note section for Table 10A, the reference to Table 12B should refer to Table 10B. Lastly, we inadvertently excluded a footnote to Table 10A that clarified how points are awarded for ulcer related conditions.

On page 49854, we are correcting the short description of ICD–9–CM code 250.8x & 707.10–707.9 from "(PRIMARY OR FIRST OTHER DIAGNOSIS = 250.8x AND PRIMARY OR FIRST OTHER DIAGNOSIS = 707.10–707.9)." to "(PRIMARY DIAGNOSIS = 250.8x AND OTHER DIAGNOSIS = 707.10–707.9)."

On page 49855, we inadvertently omitted ICD–9–CM code 948 from Table 10B under the traumatic wounds, burns and post-operative complications category. We are adding code 948 and its short description to Table 10B.

Table 12 and 14 contain several typographical errors. The CY 2007 per-visit amount for the speech-language pathology discipline found in the second column of both Table 12 on page

49868 and in Table 14 on page 49873 should be $121.32, and the speech-language pathology per-visit amount for CY 2008 in column 5 of Table 12 should be $124.65. Similarly, on page 49873, the speech-language pathology per-visit amount for CY 2008 in column 5 of Table 14 should be $122.23.

We are correcting errors in the outlier example that begins on page 49870 and continues on page 49871 as well as providing clarifying narrative language. Due to corrections being made to the outlier example, noted below, the utilization used in the outlier example that was published in the final rule would not allow the episode to qualify for an outlier payment. Consequently, we are increasing the number of skilled nursing and home health aide visits in the corrected outlier example of this correction notice.

In addition, in Step 2, on page 49871, in the calculation of the total wage-adjusted fixed dollar loss amount, the NRS amount was inadvertently included as part of the calculation. We are removing the language in Step 2 of the outlier example that incorrectly includes the NRS amount, in order to reflect the correct outlier policy.

In Step 3 of the outlier example, near the bottom of the second column and the top of the third column on page 49871, we incorrectly refer to physical therapy visits as home health aide visits in three instances.

In Step 4 of the outlier example, on page 49871, we incorrectly calculated the costs absorbed by the Home Health Agencies (HHAs) in excess of the outlier threshold by subtracting only the episode payment from the HHA's imputed costs. The sum of the episode payment and the fixed dollar loss amount, which together make up the outlier threshold, should be subtracted from the imputed costs. (This is reflected in the corrected Step 4 of the outlier example in Section III Correction of Errors).

On page 49877, in Table 15 under the impacts by "Type of Facility", we are correcting a typographical error in the group name for the subtotal for voluntary non-profit HHAs.

During our calculation of the hospital wage index, wage data from two inpatient hospital providers that belong in the Hartford-West Hartford-East Hartford, CT core-based statistical area (CBSA) were inadvertently included in rural Connecticut. Accordingly, in Addendum A, we are revising the wage index value for CBSA Code 07 (rural Connecticut) from 1.1283 to 1.1711. We are also correcting the wage index value in Addendum C as well as correcting the percentage change from CY 2007 to CY 2008 for rural Connecticut to 0.02 percent.

In Addendum B, we are revising the wage index value for CBSA Code 25540 (Hartford-West Hartford-East Hartford, CT) from 1.0937 to 1.0930. We are also correcting the wage index value in Addendum C as well as correcting the percentage change from CY 2007 to CY 2008 for CBSA 25540 to 0.33 percent.

During our calculation of the hospital wage index, wage data from one IPPS hospital was incorrectly assigned to CBSA 16180 (Carson City, NV) and should have been assigned to CBSA 39900 (Reno-Sparks, NV). Accordingly, in Addendum B, we are revising the wage index values for CBSA Code 16180 (Carson City, NV) from 0.9353 to 1.0003 and for CBSA Code 39900 (Reno-Sparks, NV) from 1.0959 to 1.0715. We are also correcting these two wage index errors in Addendum C as well as correcting the percentage change from CY 2007 to CY 2008 for CBSA 16180 and CBSA 39900 to −0.22 percent and −10.43 percent respectively.

In addition, in the footnote of Addendum A, at the end of the second sentence, we are correcting the CY that was referenced as CY 2007, instead of CY 2008. Additionally, we inadvertently left out the last two sentences which more fully describe the wage index values for Massachusetts and Puerto Rico and are correcting the footnote by adding those sentences at the end of the footnote at the bottom of Addendum A.

In Addendum B, on page 49901, the reference to the footnote for CBSA 25980 was incorrectly labeled as footnote "2", when there is only one footnote for Addendum B. Footnote 2 on page 49932 is also incorrectly labeled. Consequently, the reference to the footnote for CBSA 25980 and the actual footnote should be "1".

III. Correction of Errors

In FR Doc. 07–4184 of August 29, 2007 (72 FR 49762), make the following corrections:

1. On page 49773, in the third column, in the second paragraph, in line 6, replace "(McCall *et al.*, 2003)" with "(N McCall *et al.*, "Utilization of Home Health Services before and after the Balanced Budget Act of 1997: What Were the Initial Effects?" Health Services Research, Feb. 2003:85–106.)".

2. On page 49774, in the first column, in the fifth full paragraph, in line 8, revise "However, we have tested the non-routine supplies for stoma conditions for which we have added appropriate "status (V44) V-codes" and "attention (V55) V-codes" to the model." to read "However, we have tested both the case-mix model and the non-routine supplies model for stoma conditions, and as a result we have added appropriate "attention to" V-codes (selected codes within V55) to the scoring systems".

3. On page 49775, in the first column, in the first full paragraph, in lines 13 and 14, revise "(please see Table 2A at the end of section III.B.5)" to read "(please see Table 2A in the May 4, 2007 HH PPS proposed rule)".

4. On page 49780, in the first column, in line 6, revise "Items 16 and 17" to read "Items 15, 16, and 17". Also, in the first column of page 49780, in line 7, revise "both" to read "all three".

5. On page 49789, in Table 2B, in the fourth column, in lines 3 through 7, remove the asterisk at the end of each Short Description of ICD–9–CM codes 161, 162, 163, 164, and 165.

6. On page 49793, in the third column of Table 2B, in line 6 from the bottom, insert an "M" next to the ICD–9–CM code "321.8".

7. On page 49817, in the first column of Table 2B, "Tracheostomy care" is corrected to read "Tracheostomy". Similarly, "Urostomy/Cystostomy care" is corrected to read "Urostomy/Cystostomy".

8. On pages 49826 and 49827, Table 4 is corrected to read as follows:

TABLE 4.—REGRESSION COEFFICIENTS FOR CALCULATING CASE-MIX RELATIVE WEIGHTS

Intercept (constant for all case mix groups)	$1,322.92
1st and 2nd Episodes, 0 to 13 Therapy Visits	
C2	342.36
C3	722.64
F2	201.15
F3	391.18
S2 (6 therapy visits)	608.45

TABLE 4.—REGRESSION COEFFICIENTS FOR CALCULATING CASE-MIX RELATIVE WEIGHTS—Continued

S3 (7–9 therapy visits)	1,083.40
S4 (10 therapy visits)	1,570.38
S5 (11–13 therapy visits)	1,970.41
1st and 2nd Episodes, 14 to 19 Therapy Visits	
Constant	2,336.39
C2	569.40
C3	1,227.33
F2	264.04
F3	429.54
S2 (16–17 therapy visits)	353.49
S3 (18–19 therapy visits)	664.75
3rd+ Episodes, 0 to 13 Therapy Visits	
Constant	162.55
C2	131.91
C3	648.40
F2	304.00
F3	592.10
S2 (6 therapy visits)	794.16
S3 (7–9 therapy visits)	1,253.67
S4 (10 therapy visits)	1,755.87
S5 (11–13 therapy visits)	2,152.49
3rd+ Episodes, 14 to 19 Therapy Visits Constant	
Constant	2,656.96
C2	623.43
C3	1,350.61
F2	297.18
F3	681.32
S2 (16–17 therapy visits)	263.13
S3 (18–19 therapy visits)	617.98
All Episodes, 20+ Therapy Visits Constant	
Constant	4,465.27
C2	485.17
C3	1,212.35
F2	430.23
F3	916.53

Note: Regression coefficients were scaled by a multiplier representing the ratio of the HH PS base payment level to the Abt Associates average resource cost level.

9. On pages 49828 through 49832, Table 5 is corrected to read as follows:

TABLE 5.—CASE MIX GROUPS, AVERAGE COST, AND CASE MIX WEIGHT

Severity Level for Each Dimension				
Clinical	Functional	Service utilization	Average cost	Case mix weight
1st and 2nd Episodes, 0 to 13 Therapy Visits				
C1	F1	S1	$1,322.92	0.5827
C1	F1	S2	1,931.36	0.8507
C1	F1	S3	2,406.31	1.0599
C1	F1	S4	2,893.30	1.2744
C1	F1	S5	3,293.33	1.4506
C1	F2	S1	1,524.07	0.6713
C1	F2	S2	2,132.51	0.9393
C1	F2	S3	2,607.46	1.1485
C1	F2	S4	3,094.45	1.3630
C1	F2	S5	3,494.48	1.5392
C1	F3	S1	1,714.09	0.7550
C1	F3	S2	2,322.54	1.0230
C1	F3	S3	2,797.49	1.2322
C1	F3	S4	3,284.47	1.4467
C1	F3	S5	3,684.50	1.6229

TABLE 5.—CASE MIX GROUPS, AVERAGE COST, AND CASE MIX WEIGHT—Continued

Severity Level for Each Dimension				
Clinical	Functional	Service utilization	Average cost	Case mix weight
C2	F1	S1	1,665.28	0.7335
C2	F1	S2	2,273.73	1.0015
C2	F1	S3	2,748.68	1.2107
C2	F1	S4	3,235.66	1.4252
C2	F1	S5	3,635.69	1.6014
C2	F2	S1	1,866.43	0.8221
C2	F2	S2	2,474.88	1.0901
C2	F2	S3	2,949.83	1.2993
C2	F2	S4	3,436.81	1.5138
C2	F2	S5	3,836.84	1.6900
C2	F3	S1	2,056.46	0.9058
C2	F3	S2	2,664.90	1.1738
C2	F3	S3	3,139.85	1.3830
C2	F3	S4	3,626.84	1.5975
C2	F3	S5	4,026.87	1.7737
C3	F1	S1	2,045.56	0.9010
C3	F1	S2	2,654.23	1.1691
C3	F1	S3	3,129.18	1.3783
C3	F1	S4	3,615.94	1.5927
C3	F1	S5	4,016.20	1.7690
C3	F2	S1	2,246.71	0.9896
C3	F2	S2	2,855.38	1.2577
C3	F2	S3	3,330.33	1.4669
C3	F2	S4	3,817.09	1.6813
C3	F2	S5	4,217.35	1.8576
C3	F3	S1	2,436.73	1.0733
C3	F3	S2	3,045.41	1.3414
C3	F3	S3	3,520.36	1.5506
C3	F3	S4	4,007.11	1.7650
C3	F3	S5	4,407.37	1.9413
1st and 2nd Episodes, 14 to 19 Therapy Visits				
C1	F1	S1	3,659.30	1.6118
C1	F1	S2	4,012.79	1.7675
C1	F1	S3	4,324.05	1.9046
C1	F2	S1	3,923.34	1.7281
C1	F2	S2	4,276.60	1.8837
C1	F2	S3	4,587.86	2.0208
C1	F3	S1	4,088.85	1.8010
C1	F3	S2	4,442.11	1.9566
C1	F3	S3	4,753.37	2.0937
C2	F1	S1	4,228.70	1.8626
C2	F1	S2	4,582.19	2.0183
C2	F1	S3	4,893.45	2.1554
C2	F2	S1	4,492.74	1.9789
C2	F2	S2	4,846.00	2.1345
C2	F2	S3	5,157.26	2.2716
C2	F3	S1	4,658.24	2.0518
C2	F3	S2	5,011.50	2.2074
C2	F3	S3	5,322.77	2.3445
C3	F1	S1	4,886.64	2.1524
C3	F1	S2	5,240.13	2.3081
C3	F1	S3	5,551.16	2.4451
C3	F2	S1	5,150.45	2.2686
C3	F2	S2	5,503.94	2.4243
C3	F2	S3	5,814.97	2.5613
C3	F3	S1	5,315.95	2.3415
C3	F3	S2	5,669.44	2.4972
C3	F3	S3	5,980.48	2.6342
3rd+ Episodes, 0 to 13 Therapy Visits				
C1	F1	S1	1,485.47	0.6543
C1	F1	S2	2,279.63	1.0041
C1	F1	S3	2,739.14	1.2065
C1	F1	S4	3,241.34	1.4277
C1	F1	S5	3,637.96	1.6024
C1	F2	S1	1,789.47	0.7882
C1	F2	S2	2,583.62	1.1380

TABLE 5.—CASE MIX GROUPS, AVERAGE COST, AND CASE MIX WEIGHT—Continued

Severity Level for Each Dimension				
Clinical	Functional	Service utilization	Average cost	Case mix weight
C1	F2	S3	3,043.36	1.3405
C1	F2	S4	3,545.56	1.5617
C1	F2	S5	3,942.18	1.7364
C1	F3	S1	2,077.57	0.9151
C1	F3	S2	2,871.73	1.2649
C1	F3	S3	3,331.47	1.4674
C1	F3	S4	3,833.66	1.6886
C1	F3	S5	4,230.06	1.8632
C2	F1	S1	1,617.38	0.7124
C2	F1	S2	2,411.53	1.0622
C2	F1	S3	2,871.05	1.2646
C2	F1	S4	3,373.24	1.4858
C2	F1	S5	3,769.87	1.6605
C2	F2	S1	1,921.37	0.8463
C2	F2	S2	2,715.76	1.1962
C2	F2	S3	3,175.27	1.3986
C2	F2	S4	3,677.46	1.6198
C2	F2	S5	4,074.09	1.7945
C2	F3	S1	2,209.48	0.9732
C2	F3	S2	3,003.63	1.3230
C2	F3	S3	3,463.37	1.5255
C2	F3	S4	3,965.57	1.7467
C2	F3	S5	4,361.97	1.9213
C3	F1	S1	2,133.87	0.9399
C3	F1	S2	2,928.03	1.2897
C3	F1	S3	3,387.77	1.4922
C3	F1	S4	3,889.97	1.7134
C3	F1	S5	4,286.36	1.8880
C3	F2	S1	2,437.87	1.0738
C3	F2	S2	3,232.25	1.4237
C3	F2	S3	3,691.77	1.6261
C3	F2	S4	4,193.96	1.8473
C3	F2	S5	4,590.59	2.0220
C3	F3	S1	2,725.97	1.2007
C3	F3	S2	3,520.36	1.5506
C3	F3	S3	3,979.87	1.7530
C3	F3	S4	4,482.07	1.9742
C3	F3	S5	4,878.69	2.1489
3rd+ Episodes, 14 to 19 Therapy Visits				
C1	F1	S1	3,979.87	1.7530
C1	F1	S2	4,243.00	1.8689
C1	F1	S3	4,597.85	2.0252
C1	F2	S1	4,277.06	1.8839
C1	F2	S2	4,540.19	1.9998
C1	F2	S3	4,894.81	2.1560
C1	F3	S1	4,661.19	2.0531
C1	F3	S2	4,924.32	2.1690
C1	F3	S3	5,278.95	2.3252
C2	F1	S1	4,603.30	2.0276
C2	F1	S2	4,866.43	2.1435
C2	F1	S3	5,221.28	2.2998
C2	F2	S1	4,900.49	2.1585
C2	F2	S2	5,163.62	2.2744
C2	F2	S3	5,518.24	2.4306
C2	F3	S1	5,284.62	2.3277
C2	F3	S2	5,547.75	2.4436
C2	F3	S3	5,902.38	2.5998
C3	F1	S1	5,330.48	2.3479
C3	F1	S2	5,593.39	2.4637
C3	F1	S3	5,948.24	2.6200
C3	F2	S1	5,627.44	2.4787
C3	F2	S2	5,890.57	2.5946
C3	F2	S3	6,245.42	2.7509
C3	F3	S1	6,011.58	2.6479
C3	F3	S2	6,274.71	2.7638
C3	F3	S3	6,629.56	2.9201

TABLE 5.—CASE MIX GROUPS, AVERAGE COST, AND CASE MIX WEIGHT—Continued

Severity Level for Each Dimension				
Clinical	Functional	Service utilization	Average cost	Case mix weight
All Episodes, 20+ Therapy Visits				
C1	F1	S1	5,788.18	2.5495
C1	F2	S1	6,218.41	2.7390
C1	F3	S1	6,704.71	2.9532
C2	F1	S1	6,273.35	2.7632
C2	F2	S1	6,703.57	2.9527
C2	F3	S1	7,189.88	3.1669
C3	F1	S1	7,000.53	3.0835
C3	F2	S1	7,430.76	3.2730
C3	F3	S1	7,917.06	3.4872

10. On page 49833, in the first column, in the second paragraph, in line 18 from the bottom, remove the "–" (minus sign) in front of "8.7 percent".

11. On page 49844, in the first column, in the first full paragraph, in line 8, "HIHH PPS" is corrected to read "HIPPS". Also, on page 49844, in the second column, "HIHH PPS" is corrected to read "HIPPS" in lines 2, 4, and 14.

12. On page 49853, in the second column of Table 10A, in line 5, the description for Item #5 "Primary or other diagnosis=Diabetic ulcers" is corrected to read "Primary diagnosis = Diabetic ulcers". Also in Table 10A, add "[*]" (an asterisk enclosed in brackets) at the end of lines 5 and 10. Also on page 49853, in the first column of the "Note" for Table 10A, in line 1, replace the "," after the word "additive" with a ";". Also in line 1, add a "," after the word "however".

In the second column of the "Note" for Table 10A, in line 2, "Table 12b" is corrected to read "Table 10B". Lastly, on page 49853, add the following footnote, referenced by the "[*]" at the end of lines 5 and 10 in Table 10A, to the end of the current Note: "*If an episode receives points for diabetic ulcers, it cannot also receive points for "Non-pressure and non-stasis ulcers."

13. On page 49854, in the fourth column of Table 10B, in lines 7 and 8, revise "(PRIMARY OR FIRST OTHER DIAGNOSIS = 250.8x AND PRIMARY OR FIRST OTHER DIAGNOSIS = 707.10–707.9)." to read "(PRIMARY DIAGNOSIS = 250.8x AND OTHER DIAGNOSIS = 707.10–707.9)."

14. On page 49855, in the second column of Table 10B, below ICD–9–cm code 946.5, insert "948". In addition, in column 4 of Table 10B, insert the short description of ICD–9–CM code 948 directly under the short description of code 946.5. The short description for 948 should read, "BURN CLASS ACCORD–BODY SURF INVOLVED".

15. On page 49855, in the first column of Table 10B, delete the word "Care" from the Diagnostic Category titles for ICD–9–CM codes V55.5, V55.0, and V55.6. In addition, in the fourth column of Table 10B, delete the word "CARE" from the Short Descriptions for ICD–9–CM codes V55.5 and V55.0.

16. On page 49868, in Table 12, in the second column, the CY 2007 per-visit amount "121.22" for speech-language pathology, is corrected to read "121.32". In addition, in the fifth column, the CY 2008 per-visit amount "124.54" for speech-language pathology is corrected to read "124.65."

17. On page 49870, on the bottom of the page, beginning in the first column, remove the language that begins with "Outlier payments are determined" through page 49871, in the third column, line 26 that ends with "episode, including the outlier payment." Replace the previous outlier example with the following:

Outlier payments are determined and calculated using the same methodology that has been used since the implementation of the HH PPS.

Example 3 details the calculation of an outlier payment.

Example 3. Calculation of an Outlier Payment

The outlier payment amount is the product of the imputed amount in excess of the outlier threshold absorbed by the HHA and the loss sharing ratio. The outlier payment is added to the sum of the wage and case-mix adjusted 60-day episode amount. The steps to calculate the total episode payment, including an outlier payment, are given below.

For this example, assume that a beneficiary lives in Greenville, SC and that the episode in question began and ended in CY 2008. The episode has a case-mix severity = C3F3S5, and is a second episode with 98 visits (40 skilled nursing, 45 home health aide visits, and 13 physical therapy visits). The beneficiary had 105 NRS points, for an NRS severity level = 6. Therefore, from Table 9, the NRS payment amount = $551.00; from Table 5, the case-mix weight = 1.9413; and from Addendum B, the wage index = 0.9860.

1. Calculate case-mix and wage-adjusted 60-day episode payment, including NRS.

National standardized 60-day episode payment amount for episodes beginning and ending in CY 2008

= $2,270.32

Calculate the case-mix adjusted episode payment:

Multiply the national standardized 60-day episode payment by the applicable case-mix weight:

$2,270.32 × 1.9413 = $4,407.37

Divide the case-mix adjusted episode payment into the labor and non-labor portions:

Labor portion: 0.77082 × $4,407.37 = $3,397.29

Non-labor portion: 0.22918 × $4,407.37 = $1,010.08

Wage-adjust the labor portion by multiplying it by the wage index factor for Greenville, SC:

0.9860 × $3,397.29 = $3,349.73

Add wage-adjusted labor portion to the non-labor portion to calculate the total case-mix and wage-adjusted 60-day episode payment before NRS added:

$3,349.73 + $1,010.08 = $4,359.81

Add NRS amount to get the total case-mix and wage-adjusted 60-day episode payment, including NRS:

$551.00 + $4,359.81 = $4,910.81

2. Calculate wage-adjusted outlier threshold.

Fixed dollar loss amount = national standardized 60-day episode payment multiplied by 0.89 FDL:

$2,270.32 × 0.89 = $2,020.58

Divide fixed dollar loss amount into labor and non-labor portions:

Labor portion: 0.77082 × $2,020.58 = $1,557.50

Non-labor portion: 0.22918 × $2,020.58 = $463.08

Wage-adjust the labor portion by multiplying the labor portion of the fixed dollar loss amount by the wage index:

$1,557.50 × 0.9860 = $1,535.70

Calculate the wage-adjusted fixed dollar loss amount by adding the wage-adjusted portion of the fixed dollar loss amount to the non-labor portion of the fixed dollar loss amount:

$1,535.70 + $463.08 = $1,998.78

Add the case-mix and wage-adjusted 60-day episode amount including NRS and the wage-adjusted fixed dollar loss amount to get the wage-adjusted outlier threshold:

$4,910.81 + $1,998.78 = $6,909.59

3. Calculate the wage-adjusted imputed cost of the episode.

Multiply the total number of visits by the national average per-visit amounts listed in Table 12:

40 skilled nursing visits × $104.91 = $4,196.40

45 home health aide visits × $47.51 = $2,137.95

13 physical therapy visits × $114.71 = $1,491.23

Calculate the wage-adjusted labor and nonlabor portions for the imputed skilled nursing visit costs:

Labor portion: 0.77082 × $4,196.40 = $3,234.67

Non-labor portion: 0.22918 × $4,196.40 = $961.73

Adjust the labor portion of the skilled nursing visits by the wage index:

0.9860 × $3,234.67 = $3,189.38

Add the wage-adjusted labor portion of the skilled nursing visits to the non-labor portion for the total wage-adjusted imputed costs for skilled nursing visits:

$3,189.38 + $961.73 = $4,151.11

Calculate the wage-adjusted labor and non-labor portions for the imputed home health aide visits:

Labor portion: 0.77082 × $2,137.95 = $1,647.97

Non-labor portion: 0.22918 × $2,137.95 = $489.98

Adjust the labor portion of the home health aide visits by the wage index:

0.9860 × $1,647.97 = $1,624.90

Add the wage-adjusted labor portion of the home health aide visits to the non-labor portion for the total wage-adjusted imputed costs for home health aide visits:

$1,624.90 + $489.98 = $2,114.88

Calculate the wage-adjusted labor and non-labor portions for the imputed physical therapy visits:

Labor portion: 0.77082 × $1,491.23 = $1,149.47

Non-labor portion: 0.22918 × $1,491.23 = $341.76

Adjust the labor portion of the physical therapy visits by the wage index:

0.9860 × $1,149.47 = $1,133.38

Add the wage-adjusted labor portion of the physical therapy visits to the non-labor portion for the total wage-adjusted imputed costs for physical therapy visits:

$1,133.38 + $341.76 = $1,475.14

Total wage adjusted imputed per-visit costs for skilled nursing, home health aide, and physical therapy visits during the 60-day episode:

$4,151.11 + $2,114.88 + $1,475.14 = $7,741.13

4. Calculate the amount absorbed by the HHA in excess of the outlier threshold.

Subtract the outlier threshold from (2) from the total wage-adjusted imputed per-visit costs for the episode from (3).

$7,741.13 − $6,909.59 = $831.54

5. Calculate the outlier payment and total episode payment.

Multiply the imputed amount in excess of the outlier threshold absorbed by the HHA from (4) by the loss sharing ratio of 0.80:

$831.54 × 0.80 = $665.23 = outlier payment

Add the outlier payment to the case-mix and wage-adjusted 60-day episode payment, including NRS, calculated in (1):

$665.23 + $4,910.81 = $5,576.04

$5,576.04 equals the total payment for the episode, including the outlier payment.

18. On page 49873, in Table 14, in the second column, the CY 2007 per-visit amount "121.22" for speech-language pathology, is corrected to read "121.32". In addition, in the fifth column, the CY 2008 per-visit amount "122.13" for speech-language pathology is corrected to read "122.23".

19. On page 49877, in the first column of Table 15, under the impacts by "Type of Facility", revise the group name "Subtotal: Vol/PNP" to read "Subtotal: Vol/NP".

20. On page 49880, in Addendum A, in the third column, in line 7, the entry "1.1283" that is displayed as the wage index for CBSA code 07 (rural Connecticut) is corrected to read "1.1711".

21. On page 49881, in the footnote at the bottom of Addendum A, CY 2007 is corrected to read CY 2008. Additionally, we are correcting the footnote at the bottom of Addendum A to read, "[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for CY 2008. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as for CY 2007.

22. On page 49890, in Addendum A, in the third column, the entry "0.9353" that is displayed as the wage index for CBSA code 16180 (Carson City, NV) is corrected to read "1.0003".

23. On page 49901, in Addendum B, in the third column, the entry "1.0937" that is displayed as the wage index value for CBSA code 25540 (Hartford-West Hartford-East Hartford, CT) is corrected to read "1.0930".

24. On page 49901, in Addendum B, the reference to the footnote for CBSA 25980 and on page 49932 the actual footnote are corrected to read "1".

25. On page 49918, in Addendum B, in the third column, the entry "1.0959" that is displayed as the wage index for CBSA code 39900 (Reno-Sparks, NV) is corrected to read "1.0715".

26. On pages 49933, in Addendum C, in the fourth column, in line 7, the entry "1.1283" that is displayed as the wage index for CBSA code 07 (rural Connecticut) is corrected to read "1.1711". In addition, on page 49933, in Addendum C, in the fifth column, in line 7, the entry of "−3.64" that is displayed as the percent change from CY 07 to CY 08 for CBSA 07 is corrected to read "0.02".

27. On page 49936, in Addendum C, in the fourth column, in line 14 from the bottom, the entry of "0.9353" that is displayed as the wage index for CBSA code 16180 (Carson City, NV) is corrected to read "1.0003". In addition, on page 49936, in the fifth column, the entry "−6.70" that is displayed as the percent change from CY 07 to CY 08 for CBSA 16180 is corrected to read "−0.22".

28. On page 49939, in Addendum C, in the fourth column, in line 3, the entry "1.0937" that is displayed as the wage index for CBSA code 25540 (Hartford-West Hartford-East Hartford, CT) is corrected to read "1.0930". In addition, on page 49939, in the fifth column, in line 4, the entry "0.39" that is displayed as the percent change from CY 07 to CY 08 for CBSA 25540 is corrected to read "0.33".

29. On page 49943, in Addendum C, in the fourth column, the entry of "1.0959" that is displayed as the wage index for CBSA code 39900 (Reno-Sparks, NV) is corrected to read "1.0715". In addition, on page 49943, in the fifth column, the entry "−8.39" that is displayed as the percent change from CY 07 to CY 08 for CBSA 39900 is corrected to read "−10.43".

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides typographical and technical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the CY 2008 HH PPS final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the CY 2008 HH PPS final rule is unnecessary and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 27, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E7–23272 Filed 11–29–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7750]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Madison.	City of Huntsville (06–04–BY84P).	September 21, 2007, September 28, 2007, *Madison County Record.*	The Honorable Loretta Spencer, Mayor, City of Huntsville, P.O. Box 308, Huntsville, AL 35804.	October 1, 2007	010153
Madison	Unincorporated areas of Madison County (06–04–BY84P).	September 21, 2007, September 28, 2007, *Madison County Record.*	The Honorable Mike Gillespie, Chairman, Madison County Commission, 6994 Courthouse 700, 100 North Side Square, Huntsville, AL 35801.	October 1, 2007	010151
Arizona: Coconino.	Unincorporated areas of Coconino County (07–09–0172P).	September 13, 2007, September 20, 2007, *Arizona Daily Sun.*	The Honorable Elizabeth Archuleta, Chairperson, Coconino County, Board of Commissioners, 2500 North Fort Valley Road, Building One, Flagstaff, AZ 86001.	September 27, 2007	040019
Pima	Town of Marana (07–09–1759P).	September 6, 2007, September 13, 2007, *The Daily Territorial.*	The Honorable Ed Honea, Mayor, Town of Marana, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	December 13, 2007 ..	040118
Pima	Unincorporated areas of Pima County (07–09–1759P).	September 6, 2007. September 13, 2007, *The Daily Territorial.*	The Honorable Richard Elias, Chairman, Pima County, Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	December 13, 2007 ...	040073
California: San Diego.	City of Carlsbad (07–09–1622P).	October 4, 2007, October 11, 2007, *San Diego Daily Transcript.*	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.	September 24, 2007 ..	060285
San Diego ...	City of San Marcos (07–09–1622P).	October 4, 2007, October 11, 2007, *San Diego Daily Transcript.*	The Honorable James Desmond, Mayor, City of San Marcos, One Civic Center Drive, San Marcos, CA 92069.	September 24, 2007 ..	060296
San Diego ...	Unincorporated areas of San Diego County (07–09–1622P).	October 4, 2007, October 11, 2007, *San Diego Daily Transcript.*	The Honorable Ron Roberts, Chairman, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	September 24, 2007 ..	060284
San Joaquin	City of Lathrop (07–09–0844P).	September 20, 2007, September 27, 2007, *The Record.*	The Honorable Apolinar Sangalang, Mayor, City of Lathrop, 16775 Howland Road, Suite One, Lathrop, CA 95330.	August 31, 2007	060738
Yuba	Unincorporated areas of Yuba County (07–09–1090P).	September 20, 2007, September 27, 2007, *Marysville Appeal-Democrat.*	Mr. Robert Bendorf, County Administrator, Yuba County 915 Eighth Street, Suite 115, Marysville, CA 95901.	August 31, 2007	060427
Colorado: Boulder	City of Longmont (07–08–0506P).	September 6, 2007, September 13, 2007, *The Daily Camera.*	The Honorable Julia Pirnack, Mayor, City of Longmont, 864 Fourth Avenue, Longmont, CO 80501.	December 13, 2007 ...	080027
Boulder	Unincorporated areas of Boulder County (07–08–0506P).	September 6, 2007, September 13, 2007, *The Daily Camera.*	The Honorable Ben Pearlman, Chairman, Boulder County, Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	December 13, 2007 ..	080023
Georgia: Athens-Clarke.	Unincorporated areas of Athens-Clarke County (07–04–174P).	October 5, 2007, October 12, 2007, *Athens Banner-Herald.*	The Honorable Heidi Davison, Mayor, Athens-Clarke County, 235 Wells Drive, Athens, GA 30606.	September 14, 2007	130040
Barrow	Unincorporated areas of Barrow County (07–04–2937P).	September 12, 2007, September 19, 2007, *The Barrow County News.*	The Honorable Douglas H. Garrison, Chairman, Barrow County, Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	December 19, 2007 ..	130497
Bryan	City of Richmond Hill (07–04–5472P).	September 12, 2007, September 19, 2007, *Bryan County News.*	The Honorable Richard R. Davis, Mayor, City of Richmond Hill, P.O. Box 250, Richmond Hill, GA 31324.	December 19, 2007 ..	130018

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bryan	Unincorporated areas of Bryan County (07–04–5472P).	September 12, 2007, September 19, 2007, *Bryan County news.*	The Honorable Jimmy Burnsed, Chairman, Bryan County, Board of Commissioners, 116 Lanier Street, Pembroke, GA 31321.	December 19, 2007 ..	130016
Cherokee	Unincorporated areas of Cherokee County (07–04–3183P).	September 14, 2007, September 21, 2007, *Cherokee Tribune.*	The Honorable Buzz Ahrens, Chairman, Cherokee County, Board of Commissioners, 90 North Street, Suite 310, Canton, GA 30114.	August 30, 2007	130424
Gwinnett	City of Sugar Hill (07–04–3458P).	September 20, 2007, September 27, 2007, *Gwinnett Daily Post.*	The Honorable Gary Pirkle, Mayor, City of Sugar Hill, 4988 West Broad Street, Sugar Hill, GA 30518.	December 27, 2007 ..	130474
Gwinnett	Unincorporated areas of Gwinnett County (07–04–3458P).	September 20, 2007, September 27, 2007, *Gwinnett Daily Post.*	The Honorable Charles Bannister, Chairman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30045.	December 27, 2007 ..	130322
Maine: Waldo	City of Belfast (07–01–0690P).	August 11, 2007, August 16, 2007, *The Republican Journal.*	Mr. Terrence St. Peter, City Manager, City of Belfast, 131 Church Street, Belfast, ME 04915.	July 23, 2007	230129
Maryland: Carroll	Unincorporated areas of Carroll County (07–03–0510P).	September 13, 2007, September 20, 2007, *Carroll County Times.*	Ms. Julia W. Gouge, President, Carroll County Board of Commissioners, Carroll County Office Building, 225 North Center Street, Westminster, MD 21157.	August 28, 2007	240015
Massachusetts: Plymouth.	Town of Hanover (07–01–0795P).	September 19, 2007, September 26, 2007, *Hanover Mariner.*	The Honorable R. Alan Rugman, Chairman, Board of Selectmen, 550 Hanover Street, Hanover, MA 02339.	December 26, 2007 ..	250266
Minnesota: Polk ..	City of East Grand Forks (07–05–2270P).	September 29, 2007, October 3, 2007, *The Exponent.*	The Honorable Lynn Stauss, Mayor, City of East Grand Forks, City Hall, 600 Demers Avenue, East Grand Forks MN 56721.	January 2, 2008	275236
Polk	Unincorporated areas of Polk County (07–05–2270P).	September 29, 2007, October 3, 2007, *The Exponent.*	The Honorable Warren Affeldt, Chairman, Polk County Board of Commissioners, 612 North Broadway, Suite 215, Crookston, MN 56716.	January 2, 2008	270503
Mississippi: Rankin.	City of Brandon (07–04–3666P).	September 12, 2007, September 19, 2007, *Rankin County News.*	The Honorable Carlo Martella, Mayor, City of Brandon, P.O. Box 1539, Brandon, MS 39043.	August 24, 2007	280143
Rankin	City of Pearl (07–04–3666P).	September 12, 2007, September 19, 2007, *Rankin County News.*	The Honorable Jimmy Foster, Mayor, City of Pearl, P.O. Box 5948, Pearl, MS 39288–5948.	August 24, 2007	280145
Rankin	Unincorporated areas of Rankin County (07–04–3666P).	September 12, 2007, September 19, 2007, *Rankin County News.*	The Honorable Ken Martin, Chairman, Rankin County Board of Supervisors, 211 East Government Street, Suite A, Brandon, MS 39042.	August 24, 2007	280142
Missouri: Lincoln	Unincorporated areas of Lincoln County (06–07–BA52P).	August 22, 2007, August 29, 2007, *The Troy Free Press.*	The Honorable Sean O'Brien, Presiding Commissioner, Lincoln County, Lincoln County Courthouse, 201 Main Street, Troy, MO 63379.	November 28, 2007 ...	290869
St. Louis	City of Valley Park (07–07–1587P).	September 13, 2007, September 20, 2007, *The St. Louis Daily Record.*	The Honorable Jeffery Whitteaker, Mayor, City of Valley Park, 320 Benton Street, Valley Park, MO 63088.	August 29, 2007	290391
Montana: Lincoln	Unincorporated areas of Lincoln County (07–08–0447P).	August 2, 2007, August 9, 2007, *Tobacco Valley News.*	The Honorable Rita Windom, Chairwoman, Lincoln County Board of Commissioners, 512 California Avenue, Libby, MT 59923.	July 10, 2007	300157
New Mexico: Bernalillo.	City of Albuquerque (07–06–1449P).	October 4, 2007, October 11, 2007, *The Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	September 18, 2007 ..	350002
Sandoval	Unincorporated areas of Sandoval County (07–06–1048P).	September 20, 2007, September 27, 2007, *The Santa Fe New Mexican.*	Ms. Debbie Hayes, County Manager, Sandoval County, P.O. Box 40, Bernalillo, NM 87004.	August 27, 2007	350055

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nevada: Clark	Unincorporated areas of Clark County (06–09–BG37P).	September 6, 2007, September 13, 2007, *Las Vegas Review-Journal.*	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	December 13, 2007 ...	320003
Oklahoma: Carter	City of Ardmore (07–06–0167P).	September 6, 2007, September 13, 2007, *Daily Ardmoreite.*	The Honorable John Moore, Mayor, City of Ardmore, P.O. Box 249, Ardmore, OK 73402.	December 13, 2007 ..	400031
Rhode Island: Providence.	City of Cranston (07–01–0910P).	August 23, 2007, August 30, 2007, *Cranston Herald.*	The Honorable Michael Napolitano, Mayor, City of Cranston, Cranston City Hall, 869 Park Avenue, Cranston, RI 02910.	July 31, 2007	445396
South Carolina: Aiken.	City of North Augusta (07–04–2732P).	September 13, 2007, September 20, 2007, *Aiken Standard.*	The Honorable Lark W. Jones, Mayor, City of North Augusta, P.O. Box 6400, North Augusta, SC 29861.	August 27, 2007	450007
Texas: Austin	City of Sealy (07–06–2014P).	September 18, 2007, September 25, 2007, *The Sealy News.*	The Honorable Russell L. Koym, Mayor, City of Sealy, P.O. Box 517, Sealy, TX 77474.	December 26, 2007 ...	480017
Bexar	City of San Antonio (06–06–B105P).	September 13, 2007, September 20, 2007, *Daily Commercial Recorder.*	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	August 30, 2007	480045
Bexar	City of San Antonio (07–06–0793P).	September 27, 2007, October 4, 2007, *Daily Commercial Recorder.*	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 3, 2008	480045
Brazos	City of Bryan (05–06–1677P).	September 6, 2007, September 13, 2007, *The Eagle.*	The Honorable D. Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	December 13, 2007 ..	480082
Brazos	Unincorporated areas of Brazos County (05–06–1677P).	September 6, 2007, September 13, 2007, *The Eagle.*	The Honorable Randy Sims, Brazos County Judge, 300 East 26th Street, Suite 114, Bryan, TX 77803.	December 13, 2007 ..	481195
Collin	City of Allen (07–06–0941P).	August 30, 2007, September 6, 2007, *The Allen American.*	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	August 16, 2007	480131
Collin	City of Anna (07–06–1349P).	September 13, 2007, September 20, 2007, *McKinney Courier-Gazette.*	The Honorable Kenneth Pelham, Mayor, City of Anna, P.O. Box 776, Anna, TX 75409.	December 20, 2007 ..	480132
Dallas	City of Irving (06–06–BA90P).	September 20, 2007, September 27, 2007, *Dallas Morning News.*	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	December 27, 2007 ..	480180
Harris	Unincorporated areas of Harris County (07–06–1673P).	September 20, 2007, September 27, 2007, *Houston Chronicle.*	The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	December 27, 2007 ..	480287
Montgomery	Unincorporated areas of Montgomery County (07–06–1001P).	September 12, 2007, September 19, 2007, *The Montgomery County News.*	The Honorable Alan B. Sadler, County Judge, Montgomery County, 301 North Thompson, Suite 210, Conroe, TX 77301.	October 1, 2007	480483
Tarrant	City of Fort Worth (07–06–0876P).	September 13, 2007, September 20, 2007, *Fort Worth Star-Telegram.*	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	December 20, 2007 ..	480596
Tarrant	City of Fort Worth (07–06–0930P).	September 20, 2007, Septebmer 27, 2007, *Fort Worth Star-Telegram.*	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	December 27, 2007 ..	480596
Tarrant	City of Fort Worth (07–06–1902P).	September 20, 2007, September 27, 2007, *Fort Worth Star-Telegram.*	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	August 31, 2007	480596
Williamson ...	City of Round Rock (07–06–2615P).	September 18, 2007, September 25, 2007, *Round Rock Leader.*	The Honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	December 26, 2007 ...	481048

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Williamson ...	Unincorporated areas of Williamson County (07–06–2615P).	September 18, 2007, September 25, 2007, *Round Rock Leader.*	The Honorable Dan A. Gattis, Williamson County Judge, 301 Southeast Inner Loop, Suite 109, Georgetown, TX 78626.	December 26, 2007 ..	481079
Virginia: Chesterfield.	Unincorporated areas of Chesterfield County (07–03–1156P).	September 20, 2007 September 27, 2007 *Richmond Times-Dispatch.*	The Honorable Kelly E. Miller, Chairman, Chesterfield County, Board of Supervisors, P.O. Box 40, Chesterfield, VA 23832–0040.	December 27, 2007 ..	510035
Fauquier	Unincorporated areas of Fauquier County (07–03–1036P).	September 12, 2007 September 19, 2007 *Fauquier Times Democrat.*	Mr. Harry Atherton, Chairman, Fauquier County, Board of Supervisors, Ten Hotel Street, Suite 208, Warrenton, VA 20186.	February 7, 2008	510055
Wisconsin: Waukesha.	Village of Dousman (06–05–B016P).	September 27, 2007 October 4, 2007 *The Freeman.*	The Honorable Jack Nissen, Village President, Village of Dousman, 118 South Main Street, Dousman, WI 53118.	January 3, 2008	550480
Waukesha ...	Unincorporated areas of Waukesha County (06–05–B016P).	September 27, 2007 October 4, 2007 *The Freeman.*	The Honorable Daniel Vrakas, County Executive, Waukesha County, 1320 Pewaukee Road, Room 320, Waukesha, WI 53188.	January 3, 2008	550476
Sweetwater ..	City of Rock Springs (07–08–0796P).	September 22, 2007 September 27, 2007 *Rock Springs Daily Rocket-Miner.*	The Honorable Timothy A. Kaumo, Mayor, City of Rock Springs, 212 D Street, Rock Springs, WY 82901.	October 1, 2007	560051
Wyoming: Sweetwater.	Unincorporated areas of Sweetwater County (07–08–0796P).	September 22, 2007 September 27, 2007 *Rock Springs Daily Rocket-Miner.*	The Honorable Wally Johnson, Chairman, Sweetwater County, Board of Commissioners, 80 West Flamingo Gorge Way, Green River, WY 82935.	October 1, 2007	560087

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 19, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23214 Filed 11–29–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–4470; MB Docket No. 07–130; RM–11372]

Radio Broadcasting Services; Silverton, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Laramie Mountain Broadcasting, LLC, Channel 281A is allotted at Silverton, Colorado, as the community's second local aural transmission service. Channel 281A is allotted at Silverton, Colorado, without a site restriction at coordinates 37–48–43 NL and 107–39–50 WL.

DATES: Effective December 17, 2007.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 07–130, adopted October 31, 2007, and released November 2, 2007. The *Notice of Proposed Rule Making* proposed the allotment of Channel 281A at Silverton, Colorado. *See* 72 FR 42016, published August 1, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Silverton, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–23299 Filed 11–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–4503; MB Docket No. 07–174; RM–11387]

Radio Broadcasting Services; Walden, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Laramie Mountain Broadcasting, LLC, allots Channel 226C3 at Walden, Colorado, as the community's second local FM service. Channel 226C3 can be allotted to Walden, Colorado, in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.6 km (12.8 miles) west of Walden, at the following reference coordinates: 40–42–01 North Latitude and 106–31–21 West Longitude.

DATES: Effective December 17, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 07–174, adopted October 31, 2007, and released November 2, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Walden, Channel 226C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–23301 Filed 11–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–4469; MB Docket No. 07–176; RM–11389]

Radio Broadcasting Services; Humboldt, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Cumulus Licensing LLC, allots Channel 272C3 at Humboldt, Nebraska, as the community's first local FM service. Channel 272C3 can be allotted to Humboldt, Nebraska, in compliance with the Commission's minimum distance separation requirements without site restriction at city reference coordinates: 40–09–51 North Latitude and 95–56–40 West Longitude.

DATES: Effective December 17, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 07–176, adopted October 31, 2007, and released November 2, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Humboldt, Channel 272C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–23302 Filed 11–29–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 071002553–7554–01]

RIN 0648–AW14

Pacific Halibut Fisheries; Correction

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

ACTION: Correcting amendment.

SUMMARY: NMFS issues this correcting amendment to the Code of Federal Regulations (CFR) to correct typographical errors and update cross references in three sections of the Pacific halibut fishery regulations; definitions, catch sharing plan and domestic management measures in waters in and off Alaska, and prohibitions. This correcting amendment improves the accuracy of Pacific halibut fisheries regulations, makes minor, non-substantive changes, and does not change operating practices in halibut fisheries or the rights and obligations of fishermen managed under the halibut regulations.

DATES: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, NMFS, 907–586–7228 or email at *peggy.murphy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The International Pacific Halibut Commission (Commission) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The Commission promulgates regulations governing the Pacific halibut fishery between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, and by Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979. The Commission's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Approved regulations developed by the Commission are published as annual management measures pursuant to 50 CFR 300.62. The North Pacific Fishery Management Council (Council) may also recommend regulations that comply with approved Commission regulations and are implemented by the Secretary through NMFS. Federal regulations for Pacific halibut fisheries in Alaska are codified at 50 CFR part 300. On occasion, new and revised regulations are published in the CFR with minor technical mistakes, such as spelling errors or no space between two words. These unintended errors are fixed through a correcting amendment.

The Council implemented guideline harvest levels (GHL) in Commission regulatory areas 2C and 3A on August 8, 2003, to more comprehensively manage the charter vessel fishery for Pacific halibut stocks in waters in and off Alaska (68 FR 47256). The final rule added a text table at § 300.65(c)(1) with typographical errors in the column headings.

Also, the estimated charter vessel harvest of halibut in Commission regulatory area 2C in 2006 exceeded the GHL specified for that area. This triggered issuance of a regulation to restrict the size of fish harvested in the 2007 fishing season and reduce the charter vessel harvest of halibut in Area 2C. A final rule implementing this regulation was effective June 1, 2007 (June 4, 72 FR 30714). If the final rule were not effective by this date, the conservation and management objective of the action would have been jeopardized because the estimated reduction in weight of halibut caught in the Area 2C charter vessel fishery was based on an assumption that the final rule would be effective for the full charter fishing season of June, July and August. Effort was escalated to complete the proposed and final rule making process and good cause was found by the Assistant Administrator for Fisheries, NOAA to waive the 30–day delay in the effective date of the action under 5 U.S.C. 553(d)(3). The final rule did not change the existing daily bag limit of two halibut, but required that one of the two fish retained by persons sport fishing on a charter vessel operating in Area 2C be no more than 32 inches (81.3 cm) in length. The rule added a new paragraph, (d), to § 300.65 incrementing the alphabetic reference to existing paragraphs (d) through (k) to (e) through (l), respectively. However, in our haste, NMFS did not update the cross references to paragraphs that had changed after the new paragraph (d) was added. Only the first level paragraph designations were changed, subparagraphs designations erroneously remained unchanged.

Need for Correction

This correcting amendment is necessary to correct the typographical errors in the column headings to the GHL table at § 300.65(c)(1) and update cross references to paragraphs in the CFR at § 300.61, 300.65, and 300.66. Minor errors in spacing between words are also corrected at § 300.65(c)(2) and § 300.65(k) and an indefinite article is corrected at § 300.65(k)(2)(i)(D). These changes are needed to provide consistent reference, and make the regulations more understandable and effective.

The GHL table is structured conditionally, so if specified criteria are met, then a particular action or outcome is defined to occur. In this case, when the annual total constant exploitation yield for halibut in Area 2C (or 3A) is more than one of the poundages (tonnages) listed, then the annual GHL is set to the corresponding poundage (tonnage) specified for that area (2C or 3A). Currently, the column headings read "than" instead of "then," so the intended functional comparison using "If/Then" statements need to be corrected to make sense.

Current paragraph lettering at §§ 300.61, 300.65, and 300.66 is correct but cross references to paragraphs are incorrect and need to updated.

The text of each change is set forth in sequential order in the add/remove table of this correcting amendment. NMFS chose to display these changes in a table because simple changes are more efficiently shown in an add/remove table than by reprinting the full regulatory text.

Classification

Pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this correcting amendment to the Pacific halibut fisheries regulations. Notice and comment are unnecessary and contrary to the public interest because this action makes only minor, non-substantive changes to correct typographical errors in a table's column headings, and updates paragraph and section cross references. Minimizing the duration of time the errors are published will reduce reader confusion. Timely correction of the rule will improve public understanding of the regulations. The rule does not make any substantive change in the rights and obligations of halibut fishermen. No change in operating practices in the fisheries is required. Because this action makes only the minor, non-substantive change to § 300.61, 300.65, and 300.66 described above, this rule is not subject to the 30–day delay in effective date requirement of 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 300

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 26, 2007.

Samuel D. Rauch III,

Deputy Assistent Administrator For Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 300 is corrected by making the following correcting amendment:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

§§ 300.61, 300.65, and 300.66 [Amended]

■ 2. At each of the locations shown in the "Location" column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 300.61 definition of "Alaska Native tribe"	§ 300.65(f)(2)	§ 300.65(g)(2)	1
§ 300.61 definition of "Rural"	§ 300.65(f)(1)	§ 300.65(g)(1)	1
§ 300.61 definition of Rural resident	§ 300.65(f)(1)	§ 300.65(g)(1)	2
§ 300.65(c)(1) The table title heading in column 2.	Than the GHL for Area 2C will be:	Then the GHL for Area 2C will be:	1
§ 300.65(c)(1) The table title heading in column 4.	Than the GHL for Area 3A will be:	Then the GHL for Area 3A will be:	1
§ 300.65(c)(2)	NMFS will publish a notice in the*Federal Register* on	NMFS will publish a notice in the *Federal Register* on	1
§ 300.65(e)(1)(i)	paragraph (d)(2)	paragraph (e)(2)	1
§ 300.65(e)(1)(ii)	paragraphs (d)(3) and (d)(4)	paragraphs (e)(3) and (e)(4)	1
§ 300.65(e)(2)	paragraph (d)(1)(i)	paragraph (e)(1)(i)	1
§ 300.65(e)(3)(i)	paragraph (d)(1)(ii)	paragraph (e)(1)(ii)	1
§ 300.65(e)(3)(ii)	paragraph (d)(1)(ii)	paragraph (e)(1)(ii)	1
§ 300.65(e)(4)	paragraph (d)(1)(ii)	paragraph (e)(1)(ii)	1
§ 300.65(e)(4)(i)	paragraph (d)(1)(ii)	paragraph (e)(1)(ii)	1
§ 300.65(e)(4)(ii)	paragraphs (d)(4) and (d)(4)(i)	paragraphs (e)(4) and (e)(4)(i)	1
§ 300.65(e)(4)(ii)	paragraph (d)(1)(ii)	paragraph (e)(1)(ii)	2
§ 300.65(f)	paragraph (e)	paragraph (f)	1
§ 300.65(g)	paragraphs (f)(1) or (f)(2)	paragraphs (g)(1) or (g)(2)	1
§ 300.65(h)	paragraph (f)	paragraph (g)	1
§ 300.65(h)	paragraph (h)	paragraph (i)	1
§ 300.65(h)(1)(i)	paragraph (h)	paragraph (i)	1
§ 300.65(h)(1)(i)(C)	paragraph (j)	paragraph (k)	1
§ 300.65(h)(2)	paragraph (g)	paragraph (h)	1
§ 300.65(h)(2)(ii)	paragraph (i)	paragraph (j)	1
§ 300.65(h)(2)(iii)	paragraph (j)	paragraph (k)	1
§ 300.65(h)(4)	paragraph (g)(3)	paragraph (h)(3)	1
§ 300.65(h)(4)	paragraph (h)	paragraph (i)	1
§ 300.65(h)(4)(i)	paragraph (f)(2)	paragraph (g)(2)	1
§300.65(h)(4)(ii)	paragraph (f)(2)	paragraph (g)(2)	1
§ 300.65(i)(1)	paragraph (h)(2)	paragraph (i)(2)	1
§ 300.65(i)(1)	paragraph (f)	paragraph (g)	2
§ 300.65(i)(2)(i)	50 CFR 300.65(f)(1)	50 CFR 300.65(g)(1)	1
§ 300.65(i)(2)(ii)	50 CFR 300.65(f)(2)	50 CFR 300.65(g)(2)	1
§ 300.65(i)(3)	paragraph (f)	paragraph (g)	1
§ 300.65(i)(3)	paragraph (h)(2)	paragraph (i)(2)	1
§ 300.65(i)(3)(i)	paragraph (f)(1)	paragraph (g)(1)	1
§ 300.65(i)(3)(ii)	paragraph (f)(2)	paragraph (g)(2)	1

Location	Remove	Add	Frequency
§ 300.65(j)	paragraphs (f)(1) and (f)(2)	paragraphs (g)(1) and (g)(2)	1
§ 300.65(j)(1)(i)	paragraph (i)(2)	paragraph (j)(2)	1
§ 300.65(j)(1)(i)	paragraph (f)	paragraph (g)	1
§ 300.65(j)(1)(ii)(A)	paragraph (f)(1)	paragraph (g)(1)	1
§ 300.65(j)(1)(ii)(B)	paragraph (f)(2)	paragraph (g)(2)	1
§ 300.65(j)(1)(iii)	paragraph (f)(2)	paragraph (g)(2)	1
§ 300.65(j)(2)(ii)	paragraph (f)(1)	paragraph (g)(1)	1
§ 300.65(j)(2)(ii)	paragraph (f)(2)	paragraph (g)(2)	1
§ 300.65(j)(3)(i)(A)	paragraph (d)	paragraph (e)	1
§ 300.65(j)(3)(i)(B)	paragraph (g)	paragraph (h)	1
§ 300.65(j)(3)(ii)	paragraph (h)	paragraph (i)	1
§ 300.65(j)(3)(iv)	paragraph (g)	paragraph (h)	1
§ 300.65(j)(4)	paragraph (f)	paragraph (g)	2
§ 300.65(j)(4)	paragraph (i)(2)	paragraph (j)(2)	1
§ 300.65(j)(6)	paragraph (i)(2)	paragraph (j)(2)	1
§ 300.65(k)	paragraph (f)(2)	paragraph (g)(2)	1
§ 300.65(k)	§679.4(a)of	§679.4(a) of	1
§ 300.65(k)(1)(i)	paragraph (j)(2)	paragraph (k)(2)	1
§ 300.65(k)(1)(i)	paragraph (f)(2)	paragraph (g)(2)	1
§ 300.65(k)(2)(i)(D)	for a Educational	for an Educational	1
§ 300.65(k)(3)(i)	paragraph (g)	paragraph (h)	1
§ 300.65(k)(3)(ii)	paragraph (g)	paragraph (h)	1
§ 300.65(k)(3)(v)	paragraph (h)	paragraph (i)	1
§ 300.65(k)(3)(vi)	paragraph (g)	paragraph (h)	1
§ 300.65(k)(4)	paragraph (f)(2)	paragraph (g)(2)	2
§ 300.65(k)(6)	paragraph (j)(2)	paragraph (k)(2)	1
§ 300.66(c)	300.65 (d)	300.65 (e)	1
§ 300.66(d)	300.65 (e)	300.65 (f)	1
§ 300.66(e)	§ 300.65 (f)	§ 300.65(g)	1
§ 300.66(e)	§ 300.65 (h)	§ 300.65(i)	1
§ 300.66(e)	§ 300.65 (j)	§ 300.65(k)	1
§ 300.66(f)	50 CFR 300.65(g)(1)	50 CFR 300.65(h)(1)	1
§ 300.66(f)	50 CFR 300.65(g)(2)	50 CFR 300.65(h)(2)	1
§ 300.66(g)	50 CFR 300.65(g)(3)	50 CFR 300.65(h)(3)	1
§ 300.66(h)	§ 300.61(b)	§ 300.61	1
§ 300.66(h)	§ 300.65(f)	§ 300.65(g)	1
§ 300.66(j)	50 CFR 300.65(f)	50 CFR 300.65(g)	1
§ 300.66(j)	50 CFR 300.65(h)	50 CFR 300.65(i)	1

[FR Doc. E7–23268 Filed 11–29–07; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02]

RIN 0648–XE06

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

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

ACTION: Temporary rule; trip limit change.

SUMMARY: NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is increasing the Georges Bank (GB) yellowtail flounder trip limit to 7,500 lb (3,402 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to prevent under-harvesting of the Total Allowable Catch (TAC) for GB yellowtail flounder while ensuring that the TAC will not be exceeded during the 2007 fishing year. This action is being taken to provide additional opportunities for vessels to fully harvest the GB yellowtail flounder TAC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective November 27, 2007, through April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at § 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid Federal limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2007 fishing year (May 1, 2007 - April 30, 2008) is 900 mt. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation.

On April 24, 2007 (72 FR 20287), based upon the reduced 2007 TAC for GB yellowtail flounder (a 43 reduction from 2006) and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was set at 3,000 lb (1,361 kg) for the 2007 fishing year, to prevent the over-harvest of the 2007 GB yellowtail flounder TAC, to prevent a premature closure of the Eastern U.S./Canada Management Area and, therefore, reduced opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, only 45 percent of the TAC had been harvested as of November 21, 2007. Of this total, discards account for over 36 percent of the GB yellowtail harvest to date. Based on this information, the Regional Administrator has determined that the current rate of harvest will result in the under-harvest of the GB yellowtail flounder TAC during the 2007 fishing year. Increasing the GB yellowtail flounder trip limit from 3,000 lb (1,361 kg) to 7,500 lb (3,402 kg) is expected to increase landings of GB yellowtail flounder, reduce discards, and result in the achievement of the TAC during the fishing year without exceeding it. Based on this information, the Regional Administrator is increasing the current 3,000–lb (1,361–kg) trip limit in the U.S./Canada Area to 7,500 lb (3,402 kg), effective November 27, 2007, through April 30, 2008. GB yellowtail flounder landings will continue to be closely monitored. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, the Eastern U.S./Canada Management Area will close to all groundfish DAS vessels, and all vessels will be prohibited from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area for the remainder of the fishing year.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action would relieve a restriction by increasing the trip limit for GB yellowtail flounder for all NE multispecies DAS vessels through April 30, 2008, to facilitate the harvest of the TAC for GB yellowtail flounder while ensuring that the TAC will not be exceeded during the 2007 fishing year. This will result in decreased regulatory discards of GB yellowtail flounder, increased revenue for the NE multispecies fishery, and an increased chance of achieving optimum yield in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Management Area TACs. It is important to take this action immediately because the current restrictive GB yellowtail flounder trip limit (3,000 lb, 1,361 kg) has resulted in a high discard rate of GB yellowtail flounder (36 percent) and has prevented the NE multispecies fishery from harvesting the TAC at a rate that will result in complete harvest by the end of the 2007 fishing year. Delay in the implementation of this action could result in further wasteful discards of GB yellowtail flounder and decrease the opportunity available for vessels to fully harvest the 2007 GB yellowtail flounder TAC.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting GB yellowtail flounder in the U.S./Canada Management Area. The Regional Administrator's authority to increase trip limits for GB yellowtail flounder in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 and Framework Adjustment 42. Further, the potential of increasing the GB yellowtail flounder trip limit was announced to the public when the 3,000–lb (1,361–kg) trip limit was announced prior to the start of the 2007 fishing year. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: November 27, 2007.

Emily H. Menashes,

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

[FR Doc. 07–5887 Filed 11–27–07; 2:08 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 230
Friday, November 30, 2007

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

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1240 and 1241

[EOIR Docket No. 163P; AG Order No. 2919–2007]

RIN 1125–AA60

Voluntary Departure: Effect of a Motion To Reopen or Reconsider or a Petition for Review

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: The immigration laws provide that an alien may request and receive a grant of voluntary departure in certain cases; such a grant allows an alien to depart voluntarily during a specified period of time after the order is issued, in lieu of being removed under an order of removal. Voluntary departure is an agreed upon exchange of benefits between the alien and the government that provides tangible benefits for aliens who do depart during the time allowed. There are severe statutory penalties, however, for aliens who voluntarily fail to depart during the time allowed for voluntary departure. This proposed rule would amend the Department of Justice (Department) regulations regarding voluntary departure to allow an alien to elect to file a motion to reopen or reconsider, but also to provide that the alien's filing of a motion to reopen or reconsider prior to the expiration of the voluntary departure period will have the effect of automatically terminating the grant of voluntary departure. Similarly, the rule also provides that the alien's filing of a petition for judicial review shall automatically terminate the grant of voluntary departure. In other words, the rule would afford the alien the option either to abide by the terms of the grant of voluntary departure, in lieu of an order of removal, or to forgo the benefits of voluntary departure and instead challenge the final order on the merits in a motion to reopen or reconsider or a petition for review. If the alien elects to seek further review and forgo voluntary departure, the alien will be subject to the alternate order of removal that was issued in conjunction with the grant of voluntary departure, similar to other aliens who were found to be removable. But this approach also means he or she will not be subject to the penalties for failure to depart voluntarily.

The rule also amends the bond provisions for voluntary departure to make clear that an alien's failure to post a voluntary departure bond as required will not have the effect of exempting the alien from the penalties for failure to depart under the grant of voluntary departure. Aliens who are required to post a voluntary departure bond remain liable for the amount of the voluntary departure bond if they do not depart as they had agreed. However, the rule clarifies the circumstances in which aliens will be able to get a refund of the bond amount upon proof that they are physically outside of the United States. In addition, the rule provides that, at the time the immigration judge issues a grant of voluntary departure, the immigration judge will also set a specific dollar amount of not less than $3,000 as a civil money penalty if the alien voluntarily fails to depart within the time allowed.

DATES: Written comments must be submitted on or before January 29, 2008.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 163P, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference EOIR Docket No. 163P on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041; telephone (703) 305–0470 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041; telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. Comments that will provide the most assistance to the Department of Justice will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and EOIR Docket No. 163P. All comments received will be posted without change to *http://www.regulations.gov/*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To make an appointment, please contact EOIR at (703) 305–0470 (not a toll free call).

II. Background

The Immigration and Nationality Act (INA or Act) provides that, as an alternative to formal removal proceedings and entry of a formal removal order, "[t]he Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense." INA 240B(a)(1), (b)(1) (8 U.S.C. 1229c(a)(1), (b)(1)).

Pursuant to the Homeland Security Act of 2002, Pub. L. 107–296, the functions previously exercised by the former Immigration and Naturalization Service were transferred to the Department of Homeland Security (DHS), while the immigration judges and the Board of Immigration Appeals (Board) were retained in the Department of Justice under the authority of the Attorney General. See 6 U.S.C. 521; 8 U.S.C. 1103(g). Accordingly, DHS now has the authority to grant voluntary departure under section 240B(a) of the Act in lieu of placing the alien in

removal proceedings, while the Attorney General has authority over grants of voluntary departure issued by an immigration judge or the Board, after removal proceedings have begun. This rule deals only with orders granting voluntary departure issued by immigration judges or the Board, and does not affect DHS's issuance of orders granting voluntary departure for aliens prior to the initiation of removal proceedings. See 8 CFR 240.25.

Prior to 1996, the authority for voluntary departure was found in former section 244(e) of the Act, which contained no time limitations on the period for which voluntary departure could be valid. However, in 1996 Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104–208, Div. C, which significantly amended the Act, including provisions relating to voluntary departure. Reforms to voluntary departure included enacting restrictions limiting the time for which voluntary departure may be authorized, and enacting provisions to increase compliance by aliens who request grants of voluntary departure. The statutory changes made by IIRIRA to voluntary departure remain in effect.

Currently, prior to completion of removal proceedings an immigration judge may permit an alien to depart the United States voluntarily, if certain conditions are met, within a total period not to exceed 120 days. INA 240B(a)(2)(A) (8 U.S.C. 1229c(a)(2)(A)); 8 CFR 1240.26(b). Among these conditions is an agreement by the alien not to file an appeal. 8 CFR 1240.26(b)(1)(D).

At the conclusion of removal proceedings, additional conditions are applicable, but the alien is not required to waive the filing of an appeal to the Board. The immigration judge may permit an alien to depart the United States voluntarily only within a total period of no more than 60 days. INA 240B(b)(2) (8 U.S.C. 1229c(b)(2)); 8 CFR 1240.26(c). Where the period of voluntary departure granted by the immigration judge or the Board is less than the statutory maximum, DHS also has authority to grant an extension of voluntary departure up to the statutory maximum of 120 or 60 days.

Because the Act provides that the Attorney General "may" permit an alien to depart voluntarily, the determination whether to allow an alien in removal proceedings to depart voluntarily is within the discretion of the Attorney General and of the immigration judges and the Board, who act on his behalf. The Act further provides that "[t]he Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection." INA 240B(e) (8 U.S.C. 1229c(e)).

III. The Nature of Voluntary Departure

Voluntary departure "is a privilege granted to an alien in lieu of deportation." *Iouri* v. *Aschroft*, 487 F.3d 76, 85 (2d Cir. 2007), pet. for cert. filed, No. 07–259 (Aug. 22, 2007) (citing *Ballenilla-Gonzalez* v. *INS*, 546 F.2d 515, 521 (2d Cir. 1976)). It is "an agreed upon exchange of benefits between the alien and the Government." *Banda-Ortiz* v. *Gonzales*, 445 F.3d 387, 389 (5th Cir. 2006), cert. denied, 127 S. Ct. 1874 (2007). This quid pro quo offers an alien "a specific benefit—exemption from the ordinary bars to relief—in return for a quick departure at no cost to the government." *Id.* at 390 (quoting *Ngarurih* v. *Ashcroft*, 371 F.3d 182, 194 (4th Cir. 2004)). When choosing to seek voluntary departure, the alien agrees to take all the benefits and burdens of the statute together. *Ngarurih*, 371 F.3d at 194. In order to obtain voluntary departure at the conclusion of removal proceedings, an alien must establish to the immigration judge by clear and convincing evidence that he or she is both willing and able to depart voluntarily. See, *e.g.*, 8 U.S.C. 1229c(b)(1)(D); 8 CFR 1240.26(c)(1)(iv). Often, this involves the alien testifying under oath that he or she intends to depart the United States within the specific time period allotted, that he or she has the financial means to depart the United States, and that he or she has the necessary documentation—such as a valid passport—to do so. See 8 CFR 1240.26(c)(3).

"If an alien chooses to seek [voluntary departure]—and that choice is entirely up to the alien—it can produce a win-win situation." *Naeem* v. *Gonzales*, 469 F.3d 33, 36 (1st Cir. 2006) (citing *Bocova* v. *Gonzales*, 412 F.3d 257, 265 (1st Cir. 2005)). "For aliens, voluntary departure is desirable because it allows them to choose their own destination points, to put their affairs in order without fear of being taken into custody at any time, to avoid stigma and various penalties associated with forced removal—and it facilitates the possibility of return to the United States." *Iouri*, 487 F.3d at 82–83 (citing *Lopez-Chavez* v. *Ashcroft*, 383 F.3d 650, 651 (7th Cir. 2004)). "For the government, it expedites departures and reduces the costs that are typically associated with deporting individuals from the United States." *Id.*, at 83 (citing *Thapa* v. *Gonzales*, 460 F.3d 323, 328 (2d Cir. 2006)); accord *Chedad* v. *Gonzales*, 497 F.3d 57, 63–64 (1st Cir. 2007), pet. for reh'g en banc filed (Oct. 15, 2007); *Azarte* v. *Ashcroft*, 394 F.3d 1278, 1284 (9th Cir. 2005). "Where an alien departs within the specified time period, the alien is not regarded as having been deported and thus obtains the benefits of departure without deportation." *Iouri*, 487 F.3d at 85 (citing Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* 72.08[1][a] (rev. ed. 2005)). In particular, the grant of voluntary departure enables an alien to avoid the five- or ten-year period of inadmissibility that would result from an order of removal. See 8 U.S.C. 1182(a)(9)(A).

However, "[t]he benefits normally associated with voluntary departure come with corollary responsibilities. An alien who permits his voluntary departure period to run and fails to leave the country before the expiration date faces severe sanctions; these may include forfeiture of the required bond, a fine, and a ten-year interval of ineligibility for certain forms of immigration-related relief." *Naeem*, 469 F.3d at 37. These penalties, as well as the elimination of an "exceptional circumstances" exception previously available to aliens for failing to comply with a voluntary departure grant, were added to the voluntary departure provisions by Congress in 1996 to ensure that aliens who seek voluntary departure no longer abuse the privilege that is a grant of voluntary departure. Compare 8 U.S.C. 1229c(d) (2000 & supp.) with 8 U.S.C. 1252b(e)(2)(A) (repealed effective April 1, 1997).

Exceptions to or extensions of the voluntary departure period authorized by Congress run counter to the statutory purpose. The court in *Ngarurih* recognized this, noting "an alien could request voluntary departure, overstay the specified period and deprive the government of a quick departure, wait out the appellate review process, and then demand the full benefits of voluntary departure." *Ngarurih*, 371 F.3d at 195. Delay in proceedings generally works in the alien's favor. See, e.g., *INS* v. *Doherty*, 502 U.S. 314, 323 (1992) (noting that "every delay" in deportation proceedings "works to the advantage of the deportable alien who wishes merely to remain in the United States"); *Shaar* v. *INS*, 141 F.3d 953, 956 (9th Cir. 1998) (overruled on other grounds).

The Fourth Circuit summed up voluntary departure as follows:

> [V]oluntary departure is, from beginning to end, voluntary. The alien must request the relief; it is not offered as a matter of course. Even if he requests the relief and obtains it, the alien may later reject it by overstaying the

period specified for departure. If he rejects voluntary departure in this manner, then he is subject to removal from the United States in the ordinary course. The fact that his choice carries real consequences—a monetary penalty and subjection to the ordinary bars on subsequent relief—means that the alien has a real choice to make, not that he is * * * "forced" to leave.

Ngarurih, 371 F.3d at 194 n.12 (citation omitted).

This rule applies to all orders granting voluntary departure by an immigration judge, but the proposed changes relate primarily to orders granting voluntary departure to an alien at the conclusion of removal proceedings, pursuant to the provisions of section 240B(b) of the Act and 8 CFR 1240.26(c). At that stage of the proceedings, voluntary departure is not a relevant issue unless the immigration judge or the Board has already found that the alien is removable under section 212 or 237 of the Act (8 U.S.C. 1182, 1227). Moreover, voluntary departure is not a relevant issue unless the immigration judge or the Board is denying all of the alien's other applications for relief or protection of removal (such as asylum, withholding of removal, cancellation of removal, adjustment of status, waivers, etc.), as the issue of voluntary departure would be moot if the alien were granted any relief or protection from removal. Thus, at the request of the alien, and based on the alien's statement of his or her ability and intent to depart the United States within the period allowed for voluntary departure, the immigration judge's grant of voluntary departure permits the alien to depart voluntarily, within a fixed period of time, instead of subjecting the removable alien to an order of removal. However, a grant of voluntary departure issued at the conclusion of proceedings also includes an alternate order of removal, which takes effect automatically if the alien fails voluntarily to depart during the time allowed.

Under the current regulations, as well as under this proposed rule, an alien who is granted voluntary departure at the conclusion of proceedings before the immigration judge is still able to file an appeal to the Board and present any arguments with respect to the merits of the alien's removability and eligibility for any form of relief or protection from removal. If neither party appeals the immigration judge's decision, then the decision becomes final and the period of time for voluntary departure runs from the date of the immigration judge's grant of voluntary departure. However, in every case where the alien does file a timely appeal to the Board, the immigration judge's order is not final, and the time period for voluntary departure does not begin to run until after the conclusion of the Board's adjudication of the merits of the alien's appeal. If the Board reverses the immigration judge's decision on the merits or remands the case to the immigration judge for further proceedings, the grant of voluntary departure is rendered moot by virtue of the Board's decision. In the event of a remand, the issue of the alien's eligibility for and desire to receive voluntary departure will again be before the immigration judge as part of the remanded proceedings. Thus, it is only in those cases where the Board rejects all of the alien's arguments relating to removability and to relief or protection from removal that the order granting voluntary departure actually takes effect and the alien is obligated to depart from the United States within the specified period (no more than 60 days).

IV. Voluntary Departure and the Effect of Filing Motions To Reopen or Reconsider

Once the immigration judge or Board issues a final order in a case, regardless of whether it grants voluntary departure, the alien has the option under the Act and implementing regulations to file a motion to reopen or a motion seeking to have the decision reconsidered.

A. Motions To Reopen or Reconsider

Prior to the statutory codification of the regulatory provisions on reopening and reconsideration, the Board held in *Matter of Shaar*, 21 I&N Dec. 541 (BIA 1996), aff'd, 141 F.3d 953 (9th Cir.1998), that the filing of a motion to reopen does not suspend the running of the period for voluntary departure or excuse the alien from the requirement to depart within that period.

In the 1996 legislation, Congress enacted section 240(c)(6) and (7) of the Act (8 U.S.C. 1229a(c)(6) and (7)), which substantially codified existing regulatory provisions. Paragraph (6) allows an alien in removal proceedings to file one motion to reconsider and provides that such a motion must be filed within 30 days of the date of entry of a final removal order in his or her removal proceedings. Paragraph (7) allows an alien to file one motion to reopen removal proceedings and provides that such a motion must be filed within 90 days of the date of entry of a final administrative order of removal.[1] The statutory provisions do not provide for a stay of removal upon the filing of a motion to reopen or a motion to reconsider, except in two quite limited circumstances (for motions to reopen seeking to rescind an in absentia removal order and certain motions filed by battered spouses, children and parents, as provided in subsections (b)(5)(C) and (c)(7)(C)(iv) of section 240 of the Act).

After publication of a proposed rule on January 3, 1997, the Department of Justice published an interim rule implementing the provisions of IIRIRA on March 6, 1997. See 62 FR 10312. The supplementary information for the interim rule requested comments on what position the final, permanent rules should take on the effect on the voluntary departure period of an appeal from an immigration judge to the Board, a petition for review of a Board decision in the court of appeals, or a motion to reopen or reconsider filed with an immigration judge or the Board:

> [S]everal commenters requested clarification regarding the effect of a motion or appeal to the Immigration Court, BIA, or a federal court on any period of voluntary departure already granted. Since an alien granted voluntary departure prior to completion of proceedings must concede removeability [sic] and agree to waive pursuit of any alternative form of relief, no such appeal or motion would be possible in this situation. Regarding post-hearing voluntary departure, the Department considered several options, but has not adopted any position or modified the interim rule. The Department has identified three possible options: no tolling of any period of voluntary departure; tolling the voluntary departure period for any

[1] After the issuance of a final decision by the Board, only motions to reopen and motions to reconsider are authorized under the immigration laws. 8 U.S.C. 1229a(c)(6) and (7). A separate kind of motion, a motion to remand, can be filed only during the pendency of an appeal, but not after the issuance of a final order. 8 CFR 1003.2(c)(4) states, "A motion to reopen a decision rendered by an Immigration Judge or [DHS] officer that is pending when an appeal is filed, or that is filed while an appeal is pending before the Board, may be deemed a motion to remand for further proceedings before the Immigration Judge or the [DHS] officer from whose decision the appeal was taken." See also *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992) (discussing motions to remand considered by the Board during the pendency of the appeal). After the issuance of a final order, the Board sometimes receives motions styled as motions to "remand" or motions to "reopen and remand." Such motions, however, presuppose reopening in order to have the case remanded and, accordingly, they are properly considered to be motions to reopen and are subject to the same requirements. *Id.* The Board and the immigration judges otherwise would lack authority to entertain such motions in the first instance. *Matter of C-W-L-*, 24 I&N Dec. 346, 350 (BIA 2007) ("[T]he regulations provide that to request further relief, a motion to reopen must be filed with the last body that issued an administratively final order of removal," and the filing of a motion to reopen proceedings is "a prerequisite to our taking up any issue arising in [the respondent's] case, given the entry of the removal order against him."). Accordingly, the provisions of this rule apply to all motions to reopen or reconsider that are filed after the issuance of a final administrative decision, however such motions are styled.

period that an appeal or motion is pending; or setting a brief, fixed period of voluntary departure (for example, 10 days) after any appeal or motion is resolved. The Department wishes to solicit additional public comments on these or other possible approaches to this issue so that it can be resolved when a final rule is promulgated.

62 FR 10312, 10325–26 (Mar. 6, 1997).

Although no final rule directly addressing those issues has been published, the current regulations are consistent with the Department's longstanding view that the filing of a motion to reopen does not suspend a period of voluntary departure. The regulations do not state that the conclusion reached by the Board in *Shaar* was incorrect or was to be superseded. To the contrary, they provide that the filing of a motion to reopen or a motion to reconsider "shall not stay the execution of any decision made in the case," and that "[e]xecution of such decision shall proceed unless a stay of execution is specifically granted by" the Board or the immigration judge. 8 CFR 1003.2(f). In addition, the regulations expressly permit the reinstatement of voluntary departure in the context of reopening, but only in situations where the reopening was granted before the expiration of the period allowed for voluntary departure:

> An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making application for voluntary departure, *if reopening was granted prior to the expiration of the original period of voluntary departure.* In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act and paragraph (a) of this section.

8 CFR 1240.26(h) (emphasis added). That rule necessarily rests on the assumption that the mere *filing* of the motion to reopen does not suspend or toll the running of the voluntary departure period. Finally, although the Board has not published a precedent decision since its 1996 decision in *Shaar* addressing the interplay between the provisions relating to voluntary departure and motions to reopen or reconsider a final order in removal proceedings, the Board has continued to conclude that the filing of such a motion does not suspend or toll the voluntary departure period, as evidenced by the number of court of appeals decisions reviewing such decisions by the Board.[2]

As a practical matter, it is often the case that an immigration judge or the Board cannot reasonably be expected to adjudicate a motion to reopen or reconsider during the voluntary departure period, particularly since the voluntary departure period under section 240B(b) of the Act is limited to no more than 60 days. Many motions to reopen are filed by the alien one or two days before the end of the 60-day voluntary departure period, thereby making it impossible to resolve the matter before the period allowed for voluntary departure expires.

Because of the relatively short period of time allowed for voluntary departure after a final administrative order (no more than 60 days), and the time needed as a practical matter to adjudicate motions to reopen or reconsider, aliens who file a motion to reopen or reconsider may face a choice. Some aliens may choose to remain in the United States beyond the voluntary departure period in order to await the decision of the Board on the motion, thereby incurring the statutory penalties because of their failure to depart as they had promised to do. For example, if a decision on the motion is not issued until after the period allowed for voluntary departure has expired, which is frequently the case, then the 10-year bar on obtaining adjustment of status may be deemed to apply by operation of 8 U.S.C. 1229c(d) because of the alien's failure to depart. Other aliens may choose to depart the United States in compliance with the grant of voluntary departure, even though they have not yet received a decision on their motion, in order to avoid the voluntary departure penalties. However, under the current regulations the alien's departure from the United States has the effect of automatically withdrawing the alien's motion. 8 CFR 1003.2(d); see also 8 CFR 1003.23(b)(1) (similar rule for departure after filing a post-decision motion with the immigration judge).[3]

B. Existing Circuit Split

The courts of appeals are divided on the question of how the filing of a motion to reopen impacts a grant of voluntary departure. Four circuits have held that the timely filing of a motion to reopen during the voluntary departure period automatically "tolls" the period allowed for voluntary departure. See *Kanivets* v. *Gonzales*, 424 F.3d 330, 331 (3d Cir. 2005); *Sidikhouya* v. *Gonzales*, 407 F.3d 950, 952 (8th Cir. 2005); *Barrios* v. *United States Att'y General*, 399 F.3d 272 (3rd Cir. 2005) (pre-IIRIRA); *Azarte* v. *Ashcroft*, 394 F.3d 1278, 1289 (9th Cir. 2005); *Ugokwe* v. *United States Att'y Gen.*, 453 F.3d 1325, 1331 (11th Cir. 2006). In a similar context, the Ninth Circuit has held that the filing of a timely motion to reconsider tolls the voluntary departure period. *Barroso* v. *Gonzales*, 429 F.3d 1195 (9th Cir. 2005). The courts of appeals for the First, Fourth, and Fifth Circuits have reached the contrary conclusion, as a matter of law or by deference to the Board's authority to interpret the Act, finding that the filing of a motion to reopen does not toll the period allowed for voluntary departure. See *Chedad*, 497 F.3d at 63–64; *Banda-Ortiz*, 445 F.3d at 390; *Dekoladenu* v. *Gonzales*, 459 F.3d 500, 507 (4th Cir. 2006), pet. for cert. filed (No. 06–1285).

Under current judicial precedents in some circuits the voluntary departure process as it is being applied bears little resemblance to the statutory mandate that the alien who requests and is granted voluntary departure at the conclusion of removal proceedings is expected to depart voluntarily no more than 60 days after the administrative order becomes final. In some circuits, as noted above, the filing of a motion to reopen or reconsider has the effect of automatically tolling the time period for voluntary departure, allowing the alien to remain in the United States until the motion is adjudicated. The result in these circuits is that some aliens who have received a final administrative order, after appealing to the Board, are able to remain in the United States to pursue the full panoply of means to challenge the final decision through administrative motions to reopen or reconsider (including in some cases the filing of a motion to reconsider the denial of a motion to reopen). Those processes, of course, can take many months to accomplish. Thus, contrary to the incentives and benefits of voluntary departure that result if an alien actually

[2] The Department's practice has remained consistent with respect to the other two subjects referenced in the 1997 request for comments as well. With respect to appeals from an immigration judge to the Board, the INA itself provides that an immigration judge's order does not become final until the Board issues its decision, see 8 U.S.C. 1101(a)(47)(B), and the Department's regulations provide that the voluntary departure period runs from that date, 8 CFR 1241.1(f). With respect to petitions for review, in contrast, the Department's position continues to be that the filing of such a petition does not by its own force create a stay of removal.

[3] We note that two courts of appeals have reached contrary conclusions with respect to section 1003.2(d). See *Li* v. *Gonzales*, 473 F.3d 979 (9th Cir. 2007) (interpreting section 1003.2(d) only to bar the filing of a motion to reopen if the alien "is" in removal proceedings at the time of his or her departure, but not to bar the filing of a motion to reopen if the alien was already the subject of a final order of removal at the time of departure); *William* v. *Gonzales*, 499 F.3d 329 (4th Cir. 2007) (holding that section 1003.2(d) is inconsistent with the provisions of section 240(c)(7) of the INA). The Board at present is following those decisions only for cases arising in those two circuits. This proposed rule does not address the interpretation or applicability of section 1003.2(d).

departs within a short, fixed, period of time, the result in those areas of the country is that aliens who accept a grant of voluntary departure are nevertheless able to remain in the United States for an often lengthy period of time and are not obligated to depart voluntarily until after they have exhausted all opportunities for reconsideration, remand, or reopening. At that point, the government will already have borne much the same burdens that it would have faced if the alien had not agreed to depart voluntarily, and much of the benefit to the government will have been lost. *Banda-Ortiz*, 445 F.3d at 390. This result is also contrary to the clear congressional intent to limit the period of time allowed under the voluntary departure provisions, which before the 1996 amendments had allowed aliens to remain in the United States for many months or even years under grants of voluntary departure.

Contrary to the decisions of those courts of appeals, the Department's interpretation of the Act and the existing regulations is that the filing of a motion to reconsider or reopen under section 240(c)(6) or (7) of the INA (8 U.S.C. 1229a(c)(6) or (7)) does not automatically toll the voluntary departure period, and that such tolling is not necessary in order to give effect to both the INA's provision for an alien to file a motion to reopen and its provision authorizing the Attorney General to permit voluntary departure. As the Fourth Circuit has explained, the "voluntary departure provision" establishing the maximum departure period of 60 or 120 days "applies to certain removable aliens" who qualify for that relief, "while the motion to reopen provision applies to all aliens subject to removal." *Dekoladenu*, 459 F.3d at 505–06. Indeed, only 11 percent of removable aliens were granted voluntary departure in 2005. See id. at 506 n.5. Accordingly, "[f]ollowing the normal rule of statutory construction, the more specific voluntary departure provision governs in those limited situations in which it applies." *Id.* at 506. Motions to reopen are unaffected in other cases. Moreover, while the INA provides that an alien may file one motion to reopen, it confers no right to substantive relief. To the contrary, the granting of reopening is discretionary. Similarly, the granting of voluntary departure is discretionary with the Attorney General, and the Attorney General is expressly authorized to limit eligibility for additional classes of aliens pursuant to section 240B(e) of the INA (8 U.S.C. 1229c(e). Finally, although an alien who has obtained a grant of voluntary departure and is subject to an alternate order of removal may, after exhausting administrative remedies with the Board, file a petition for review with the court of appeals, it is well-established that the mere filing of such a petition does not automatically toll or suspend the voluntary departure period, as illustrated by the number of appellate decisions addressing whether it is appropriate to construe a motion for a stay of removal as necessarily encompassing a request for a stay of voluntary departure. It therefore is fully consistent with the Act that, under applicable procedures, an alien who files a motion to reopen and chooses to remain in the country until the Board acts upon it thereby gives up the benefits of voluntary departure.

That was the conclusion reached by the Board in Shaar under the reopening regulations that were codified in the 1996 amendments made by IIRIRA, and there is no indication in those amendments or their legislative history that they overturned the rule of Shaar. To the contrary, a rule of automatic tolling, with resulting delay, of voluntary departure would be contrary to Congress's decision in the 1996 amendments to impose strict time limits on the voluntary departure period. Indeed, "mandat[ing] tolling of the voluntary departure period when an alien files a motion to reopen would have the effect of rendering the time limits for voluntary departure meaningless." *Dekoladenu*, 459 F.3d at 506; see *Banda-Ortiz*, 445 F.3d at 390 ("Automatic tolling would effectively extend the validity of [an alien's] voluntary departure period well beyond the sixty days that Congress has authorized.").

The Supreme Court recently granted certiorari to review a decision by the Fifth Circuit with respect to the effect of filing a motion to reopen, in order to resolve the circuit split under existing law. *Dada* v. *Keisler*, 128 S. Ct. 6 (Sept. 25, 2007) (No. 06–1181).

C. The Attorney General's Authority To Promulgate a Different Regulatory Scheme in the Future

As a result of the varying judicial interpretations in the different regional circuits, there is a substantial geographic disparity with respect to how voluntary departure is administered, depending solely on the location of the hearing before the immigration judge. Experience also has shown that the current regulatory framework can lead to significant delays in promoting and effectuating voluntary departure after a final administrative order is entered. Though such disparities of interpretation among the circuits occur in other contexts as well, there are sound public policy reasons for the Attorney General to promote a greater measure of uniformity and expedition in the administration of the immigration laws. The goals of promoting uniformity of interpretation and assuring prompt voluntary departure underlie this proposed rule.

Circuit court decisions holding that the filing of motions to reopen or reconsider tolls the running of a voluntary departure period do not prevent the Department of Justice from rendering an authoritative construction of the Act that does not require tolling, as it does now in issuing these rules. "Only a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction." *National Cable & Telecom. Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 982–83 (2005); *id.* at 983–84 ("A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion."). Certainly, nothing in the Act "unambiguously" requires that the mere filing of a motion to reopen or reconsider automatically tolls the voluntary departure period within which the alien has agreed to depart. And indeed the Board's practice under the 1996 amendments (as it was before those amendments as stated in Shaar) has been not to deem the voluntary departure period automatically tolled upon the filing of a motion to reopen or reconsider.

Nor do the various judicial decisions under the current regulatory framework preclude the Attorney General from adopting a different regulatory scheme for the future within the broad parameters of the statutory provisions enacted by Congress. Congress clearly provided for the Attorney General to have broad authority to implement the voluntary departure provisions of the Act and to limit eligibility for voluntary departure for specified classes or categories of aliens, as provided in section 240B(e) of the Act. The provisions of this rule are an exercise of these statutory authorities. These new rules will be applicable to grants of voluntary departure that will be made in the future, after these rules are finalized, and will not affect any cases in which a grant of voluntary departure was made prior to their adoption.

The voluntary departure statute does not unambiguously provide that permission to depart voluntarily is irrevocable once granted, such that aliens permitted to depart voluntarily by an immigration judge must always be viewed as having been "permitted to depart voluntarily" for purposes of 8 U.S.C. 1229c(d). Accordingly, the Attorney General retains discretion and authority to provide, by regulation, that permission to depart voluntarily is conditioned upon the alien's agreeing to accept the finality of the Board's order after it is issued (or the finality of the immigration judge's order if there is no appeal), and depart within the period allowed for voluntary departure thereafter, without seeking to challenge the final order by filing a motion to reopen or reconsider.

That is what these proposed rules would do, by providing that permission to depart voluntarily, following entry of a final order, will terminate if the alien files a motion to reopen or reconsider the final administrative order. A voluntary departure order reflects an agreement or bargain between the government and the alien, in which the alien represents that he or she is ready and able to depart voluntarily within a short, defined period of time, in exchange for receiving the favorable terms of a grant of voluntary departure. If the alien decides not to uphold his or her end of the bargain and instead chooses to challenge the final order rather than departing within the time allowed, these rules provide that the grant of voluntary departure is terminated and the alternate order of removal becomes effective. Moreover, unlike the current regulatory scheme for grants of voluntary departure prior to the conclusion of proceedings before an immigration judge, in which the alien is required irrevocably to waive the right to appeal as provided in 8 CFR 1240.26(b)(1)(i)(D), these proposed rules are more favorable to the alien because they do not irrevocably bar the alien from challenging the final order after it is entered by the Board. The alien will be free to forgo voluntary departure and instead to elect to challenge the final order through a motion to reopen or reconsider, or a petition for review. Or, put another way, these rules would allow the alien an opportunity to withdraw from the arrangement into which he or she effectively entered under the statute and the amended regulations at the time of seeking and accepting voluntary departure, and instead to pursue further challenges after issuance of the final order. And because the alien's act of filing an administrative motion to reopen or reconsider or a petition for judicial review would have the effect of terminating a period of voluntary departure granted in accordance with these regulations, no voluntary departure period would remain to be tolled or stayed.

This approach advances the legitimate interests of the government in preserving the purposes of the voluntary departure authority; it also enables aliens to avoid the consequences under section 240B(d) of the INA of an earlier decision to accept a grant of voluntary departure, in the event of a change of circumstances that may lead the alien to seek to avoid those consequences, including the alien's decision to challenge the validity of a removal order through a motion to reconsider or judicial review.

D. Motions To Reopen or Reconsider a Final Order Filed During the Voluntary Departure Period

This rule responds to one of the principal policy arguments offered in support of tolling. In many cases, the alien had sought relief or protection from removal, which was denied, and the filing of a motion to reopen or reconsider is a means for aliens to continue to contest the merits of the denied claims or to address eligibility for newly discovered relief. Under this rule, aliens who file administrative motions to reopen or reconsider prior to the expiration of the time allowed for voluntary departure would no longer be subject to the penalties for failure to depart, because the grant of voluntary departure will be terminated upon the filing of the motion. However, they will then be subject to a removal order, as is the case for other aliens who had been found to be removable and ineligible for any form of relief or protection from removal.

As noted by the Supreme Court, "[m]otions for reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence." *INS* v. *Abudu*, 485 U.S. 94, 107–08 (1988). This is "especially true in a deportation proceeding, where, as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States." *Doherty*, 502 U.S. at 323.

However, the Department recognizes that Congress has provided that aliens may file a motion to reopen or motion to reconsider after a final order of removal has been entered in his or her case. Some of these aliens may have just received an immediate relative visa petition, for example, and wish to file a motion to reopen their case to pursue relief through adjustment of status before any adverse consequences for failing to timely depart attach under 240B(d) of the Act.[4] Other aliens may believe an error was made in their case, and timely seek reconsideration of their decision.

Under this rule, if an alien decides to contest a final administrative order by filing a motion to reopen or reconsider after having received a grant of voluntary departure, the grant of voluntary departure will be automatically terminated. Such aliens will no longer have the privilege and responsibility of departing voluntarily and will become subject to a removal order, just like other aliens at the conclusion of the removal proceedings who are not granted any form of relief or protection from removal. This means, however, that they will be able to pursue the administrative motion without the risk of being subject to the statutory penalties for failing to depart voluntarily.

This proposal is intended to allow an opportunity for aliens who have been granted voluntary departure to be able to pursue administrative motions without risking the imposition of the voluntary departure penalties, to promote uniformity, and also to bring the voluntary departure process back to its statutory premises. The proposed rule further recognizes that although an alien may request voluntary departure in good faith before an immigration judge, the alien's circumstances may change while an appeal is pending before the Board, and ensures that the alien is not subsequently penalized when such change in circumstances occurs.

The Department accordingly proposes to amend 8 CFR 1240.26 to provide for the automatic termination of a grant of voluntary departure upon the timely filing of a motion to reopen or reconsider, as long as the motion is filed prior to the expiration of the voluntary departure period. By seeking to challenge the final administrative order through a post-decision motion to reopen or reconsider, the alien will be manifesting that he or she is no longer willing to depart voluntarily within the specific number of days as previously allowed by the immigration judge or the Board. Put another way, the alien is no longer willing to abide by the initial quid pro quo on which voluntary

[4] The Department strongly encourages aliens who are in removal proceedings when the visa petition is approved to file a motion for remand during the pendency of the proceedings, and not wait until after a final order of removal has been entered.

departure was predicated. Cf. *Banda-Ortiz*, 445 F.3d at 389. This means that the filing of a motion to reopen or reconsider within the time allowed for voluntary departure would terminate the privilege and responsibility of voluntary departure, and the alien would become subject to the alternate order of removal issued by the immigration judge or the Board. The alien, however, would still be able to pursue the relief sought through the post-decision motion, and if the motion to reopen or reconsider is successful, then such an alien would not be subject to the penalties for failing to depart (including the 10-year bars on eligibility for adjustment of status or cancellation of removal). Assuming the alien is otherwise eligible for new relief sought through the filing of a motion to reopen, and merits a favorable exercise of discretion, the terminated grant of voluntary departure would not pose an impediment to reopening to pursue such relief. Moreover, even if the motion to reopen or reconsider is unsuccessful, he or she would remain subject to the removal order but would not be subject to the penalties under section 240B(d) of the Act for failure to depart. Of course, as with any other alien who is subject to a final order of removal, DHS is authorized to detain and remove the alien from the United States at any time pursuant to section 241 of the Act, unless the order of removal has been stayed.

In the Department's view, extending the period allowed for voluntary departure by the filing of a motion to reopen or reconsider serves to undermine the basic statutory purpose of the voluntary departure agreements, and is not consistent with the Act. See Chedad, 497 F.3d at 64 ("These provisions [relating to limits on voluntary departure] reflect a coherent effort to ensure that voluntary departure does, in fact, result in the alien's expeditious departure from the United States. Reading [the provision allowing for one motion to reopen within 90 days of a final administrative order] as stopping the voluntary departure clock would contravene this purpose, allowing the filing of motions to reopen to delay voluntary departure dates."). This proposed rule provides that aliens who file a motion to reopen or reconsider within the period allowed for voluntary departure are thereby exempted from the penalties for failure to depart voluntarily under section 240B(d) of the Act. This approach avoids any perceived tension between the statutory provisions relating to motions to reopen or reconsider and the statutory penalties for failure to depart voluntarily. Since the grant of voluntary departure is terminated automatically upon the filing of a motion to reopen or reconsider during the voluntary departure period, there is no period of voluntary departure to toll during the pendency of the motion to reopen or reconsider.

E. Motions To Reopen or Reconsider Filed After the Period for Voluntary Departure Has Elapsed

The issues are very different, however, if the alien's motion to reopen or reconsider is not filed until after the period of voluntary departure has elapsed, at a time when—because of the alien's failure to depart voluntarily within the time allowed—the penalties under 8 U.S.C. 1229c(d), including the 10-year bar on certain forms of discretionary relief, have already taken effect. If the alien already has failed to comply with his undertaking voluntarily to depart from the United States by the time his motion is filed, he is now properly barred from relief under that section.

In general, where an alien does not file a motion to reopen until after the expiration of the voluntary departure period, the Board's grant of reopening does not have the effect of relieving the alien from the consequences of having failed to depart before the voluntary departure period expired. See *Singh* v. *Gonzales*, 468 F.3d 135, 139–40 (2d Cir. 2006); *Dacosta* v. *Gonzales*, 449 F.3d 45, 50–51 (1st Cir. 2006). But cf. *Orichitch* v. *Gonzales*, 421 F.3d 595 (7th Cir. 2005) (holding that the Board's grant of reopening had the effect of vacating the underlying voluntary departure order where a joint motion to reopen was executed but not filed prior to expiration of the voluntary departure period).

With respect to motions to reopen filed after the expiration of the voluntary departure period, to conclude that the granting of such a motion would vitiate or vacate the penalties that had already taken effect because of the alien's previous failure to depart voluntarily would effectively undermine the relevance of such penalties in this context. Aliens who are subject to a final order of removal cannot seek relief from removal from an immigration judge or the Board (such as adjustment of status or cancellation of removal) unless they are successful in reopening their final orders. Thus, prior to the granting of a motion to reopen, such aliens are unable to obtain such relief for reasons independent of the voluntary departure penalties. However, if the mere fact of granting a motion to reopen had the effect of vacating the voluntary departure penalties, after those penalties had already taken effect as a result of the alien's failure to depart during the period allowed for the voluntary departure, then the intended effect of those penalties in deterring aliens from overstaying the period of voluntary departure would clearly be diminished. Accordingly, this proposed rule would provide that the granting of a motion to reopen or reconsider that was filed after the penalties under section 240B(d) of the Act had already taken effect does not have the effect of vitiating or vacating those penalties, except as provided in section 240B(d)(2) of the Act.

The Board recently concluded that there is no equitable basis for creating an exception to the statutory penalties for aliens who voluntarily fail to depart during the period allowed for voluntary departure. *Matter of Zmijewska*, 24 I&N Dec. 87, 93 (BIA 2007) ("The congressional repeal of the 'exceptional circumstances' exception to the voluntary departure penalty soon after our decision in *Matter of Grijalva*, [21 I&N Dec. 472 (BIA 1996)], and its replacement with a 'voluntariness' test strongly suggest that Congress did not intend to allow the Board and the courts to create and apply a set of equitable exceptions that would amount to a substitute version of the repealed 'exceptional circumstances' exception.").[5]

The Board also noted that the statutory penalties do not apply if the alien was unaware of the voluntary departure order or was physically unable to depart. See Matter of Zmijewska, 24 I&N Dec. at 94 (finding that the "voluntariness" exception is "limited to situations in which an alien, through no fault of his or her own, is unaware of the voluntary departure order or is physically unable to depart. It would not include situations in which departure within the period granted would involve exceptional hardships to the alien or close family members. Nor would lack of funds for departure be considered an involuntary failure to depart."). However, the Board's decision raises broader questions with respect to ineffective assistance of counsel that are not addressed in this rule.

[5] *Matter of Zmijewska* does note that Congress has provided one specific exception to the imposition of the statutory penalties for failure to depart, with respect to the recently enacted exception in cases of extreme cruelty or battery. *Id.* The enactment of one specific exception for this limited category of cases is evidence of congressional intent not to contemplate exceptions in other circumstances.

V. Voluntary Departure and Filing Petitions for Review

Section 242 of the Act (8 U.S.C. 1252) gives aliens the opportunity, with certain exceptions, to seek circuit court review of a final order of removal by filing a petition for review within 30 days of the final administrative order.

In the experience of the Department, aliens who have been granted voluntary departure routinely file petitions for review pursuant to section 242 of the Act and seek a stay, with the result of delaying the voluntary departure obligation for many months or even years, while the petition for review is adjudicated in the courts of appeals. This rule also proposes new measures to avoid such open-ended extensions of the period of time authorized by Congress for aliens to depart voluntarily. Again, as noted above, this proposal reflects an exercise of the Attorney General's authority to implement the voluntary departure provisions, as well as to limit eligibility for voluntary departure for certain classes or categories of aliens, as provided in section 240B(e) of the Act.

A. Divergent Circuit Motions Practice Concerning the Impact on the Voluntary Departure Period of Filing a Petition for Review

Extensive litigation has resulted from the question of whether a court of appeals may stay the running of the voluntary departure period while a petition for review is pending. These decisions have resulted in a non-uniform, patchwork system of motions practice in the courts of appeals concerning the effect of filing a petition for review on the voluntary departure period. No court of appeals has held that the mere filing of a petition for review automatically stays or tolls the running of the voluntary departure period. But several circuits have found that not only do they have authority to stay voluntary departure periods provided by statute, but that an alien need not even make a specific request for such a stay, if they file a motion for a stay of removal. The Sixth, Eighth and Ninth Circuits now follow this course, construing a request for a stay of removal as a request for a stay of the voluntary departure period. See *Macotaj* v. *Gonzales,* 424 F.3d 464, 466 (6th Cir. 2005); *Rife* v. *Ashcroft,* 374 F.3d 606, 614–15 (8th Cir. 2004); *Desta* v. *Ashcroft,* 365 F.3d 741, 743 (9th Cir. 2004).

Other circuit courts have allowed for a stay of the voluntary departure period if it is explicitly requested within the time period. See *Vidal* v. *Gonzales,* 491 F.3d 250 (5th Cir. 2007); *Iouri,* 487 F.3d at 85; *Obale* v. *United States Att'y Gen.,* 453 F.3d 151, 156 (3d Cir. 2006); *Bocova,* 412 F.3d at 268; *Lopez-Chavez* v. *Ashcroft,* 383 F.3d 650 (7th Cir. 2004). The Seventh Circuit has required a petitioner to file a request to extend the voluntary departure period with the district director to meet the exhaustion requirement. See *Alimi* v. *Ashcroft,* 391 F.3d 888, 893 (7th Cir. 2004).

The Fourth Circuit has held that it does not have authority to toll the period. *Ngarurih,* 371 F.3d at 194. The Eleventh and Tenth Circuits have not directly addressed the tolling issue, but have held, as have all other circuits that have addressed this issue, that the courts of appeals do not have authority to reinstate or extend the voluntary departure period. See *Nkacoang* v. *INS,* 83 F.3d 353, 357 (11th Cir. 1996); *Castaneda* v. *INS,* 23 F.3d 1576, 1578 (10th Cir. 1994).

The circuit courts that held they have authority to stay the voluntary departure period have based their decision either on the equitable power of the courts of appeals to issue a stay or on the theory that 28 U.S.C. 2349 contains a statutory grant of authority. See, e.g., *Obale,* 453 F.3d at 155 n.1.

Over the last four fiscal years, in roughly 40% of the cases in which the alien was granted voluntary departure with an alternate order of removal, the aliens have filed petitions for review with the courts of appeals. Voluntary departure is intended as a benefit to both the alien and the government, operating as an agreement whereby both sides receive benefits. *Chedad,* supra. Like tolling during the pendency of a motion to reopen, suspending the voluntary departure period and the alien's obligation to depart, during the pendency of a petition for review, deprives the government of one of the principal considerations of the underlying voluntary departure agreement—a quick departure without the considerable expense of protracted litigation. Moreover, the delays attributable to the pendency of judicial review frequently result in extending the period allowed for voluntarily departure much longer than the delays attributable to the filing of administrative motions with the Board, in some cases allowing an additional two or three years before the alien is required to depart.

Where the court has stayed the period for voluntary departure, the alien is not required to depart the United States until the very end of the litigation process, after exhausting all opportunities for administrative or judicial relief. But *all* aliens who have been ordered removed and have exhausted all opportunities for overturning the final order are under a legal obligation to depart the United States. Aliens who benefit from automatic tolling or judicial stays and are permitted to remain in the United States until the conclusion of all litigation challenges are effectively allowed to render nugatory the statutory premise that aliens who seek and are granted voluntary departure are expected to depart promptly from the United States upon issuance of a final order, in exchange for the benefits of voluntary departure, which was granted to them at their own request and was based on their proof of their intention and ability to depart the United States within the time allowed.

Moreover, as a legal matter, petitions for judicial review differ from post-order administrative motions, in that an alien is not precluded from pursuing such a petition after the alien has departed from the United States. See, e.g., *Zazueta-Carrillo* v. *Ashcroft,* 322 F.3d 1166 (9th Cir. 2003) ("We now may entertain a petition after the alien has departed. See 8 U.S.C. 1252(b)(3)(B) (replacing 8 U.S.C. § 1105a(c))."); *Mendez-Alcaraz* v. *Gonzales,* 464 F.3d 842, 844 n.8–13 (9th Cir. 2006). This contrasts with motions to reopen or reconsider, which generally cannot be filed after an alien's departure and are deemed to be withdrawn by the alien's departure, whether voluntary or not. Cf. 8 CFR 1003.2(d) and 1003.23(b)(1) (motions before the Board and immigration judges are deemed withdrawn upon an alien's departure from the United States).[6] Thus, an alien is able to depart from the United States after filing a petition for review without impairing his or her opportunity to obtain judicial review.[7] This means that aliens are able to pursue judicial review while at the same time also complying with the grant of voluntary departure (though it is evidently rare as a matter of fact for an alien to depart the United States within the period allowed for

[6] But see *William* v. *Gonzales,* 499 F.3d 329, 333 (4th Cir. 2007) (concluding that 8 U.S.C. 1229a(c)(7)(A) "clearly and unambiguously grants an alien the right to file one motion to reopen, regardless of whether he is present in the United States when the motion is filed."); *Li,* 473 F.3d at 982 (interpreting section 1003.2(d) not to bar the filing of a motion to reopen if the alien was the subject of a final order of removal at the time of departure).

[7] See *Mendez-Alcaraz,* 464 F.3d at 844 nn.8–13 (holding that IIRIRA's permanent rules, effective April 1, 1997, "do not include the old jurisdiction-stripping provision for excluded, deported, or removed aliens" under former 8 U.S.C. 1105a(c); that the court retains jurisdiction over a petition for review after an alien has departed; and that a petitioner's removal does not render a case moot).

voluntary departure after filing a petition for review).

B. The Proposed Rule

This rule would respond to one of the principal policy arguments offered in support of a stay during the pendency of judicial review. Under this rule, if an alien decides to contest a final administrative order by filing a petition for review before departing the United States, the grant of voluntary departure will be terminated automatically. Such aliens will no longer have the privilege or responsibility of departing voluntarily and will become subject to a removal order, just like every other alien at the conclusion of the removal proceedings who is not granted any form of relief or protection from removal. This means, however, that they will be able to pursue judicial review without the risk of being subject to the statutory penalties for failing to depart voluntarily.[8] Again, as with any other alien who is subject to a final order of removal, DHS is authorized to detain and remove the alien from the United States at any time pursuant to section 241 of the Act, unless the order of removal has been stayed, but the alien's removal would not impair the availability of judicial review.

Again, this proposal is intended to allow an opportunity for aliens who have been granted voluntary departure to be able to pursue judicial review without risking the imposition of the voluntary departure penalties, to promote uniformity, and also to bring the voluntary departure process back to its statutory premises. It further recognizes that although an alien may request voluntary departure in good faith before an immigration judge, the alien's circumstances may change by the time the case is decided by the Board, and ensures that the alien is not subsequently penalized when such change in circumstances occurs.

The Department proposes to amend 8 CFR 1240.26 to provide for the automatic termination of a grant of voluntary departure upon the filing of a petition for review. This rule is intended to result in a uniform application of the effect of the voluntary departure period in all the circuit courts of appeals. Under this rule, since the grant of voluntary departure would be terminated automatically if the alien elects to file a petition for review, there would no longer be any period of voluntary departure to be stayed or tolled during the pendency of the judicial review. This rule is consistent with the congressional intent, as expressed in the 1996 changes to the Act, that aliens may no longer remain in a period of voluntary departure for years, but instead are strictly limited to a discrete period of time for voluntary departure.

The termination of the grant of voluntary departure upon the filing of a petition for review (or an administrative motion to reopen or reconsider) does not have the effect, however, of altering the date on which the Board's decision became administratively final. Existing regulations provide that a decision by the Board dismissing an alien's appeal becomes administratively final upon issuance of the Board's decision, see 8 CFR 1003.1(d)(7), 1241.1, and that is the relevant date for purposes of section 242 of the Act (8 U.S.C. 1252). The termination of voluntary departure on account of the alien's actions means that the alternate order of removal that was entered at the time of the grant of voluntary departure pursuant to 8 CFR 1240.26(d) takes effect automatically. The date of the final order remains the date the Board issued its decision.

We also seek public comment on a related issue relating to inadmissibility under section 212(a)(9)(A) of the Act (8 U.S.C. 1182(a)(9)(A)). In general, an alien who has been ordered removed is inadmissible under that section if the alien seeks admission again within a specified period of five or ten years after the alien's departure or removal. An alien who leaves under a grant of voluntary departure has not been "removed" and so is not subject to these grounds of inadmissibility (though he or she may be subject to other grounds of inadmissibility). As noted above, this rule provides that the filing of a petition for review would terminate the grant of voluntary departure, with the result that any alien who files a petition for review, and does not prevail, thus may be subject to inadmissibility under section 212(a)(9)(A) of the Act. However, we note that the Act also allows an alien to maintain his or her petition for judicial review after departing from the United States, as discussed above. The Department's general experience is that the number of aliens who accept a grant of voluntary departure, file a petition for judicial review, and then actually depart the United States within the time specified for voluntary departure is very small indeed, but we recognize the possibility that at least some aliens might do so. Though we do not make a specific proposal here, we seek public comment on whether or not it might be advisable (and the possible means for accomplishing such a result) to consider adopting a rule that those aliens who do depart the United States during the period of time specified in the grant of voluntary departure, after filing a petition for review, would not be deemed to have departed under an order of removal for purposes of section 212(a)(9)(A) of the Act. Such a provision may provide an incentive for the alien to pursue his or her challenge to the validity of the removal order from abroad.

VI. Notice to the Alien Under the Proposed Rule

The provisions of this proposed rule will be applied prospectively only, that is, only with respect to immigration judge orders issued on or after the effective date of the final rule that grant a period of voluntary departure. The existing regulations and precedents will continue to apply to any order granting voluntary departure issued prior to the effective date of the final rule.

Currently, an immigration judge's decision advises the alien of the right to file an appeal with the Board within 30 days of the decision, and this rule makes no change in that respect since aliens accepting a grant of voluntary departure will still be able to appeal to the Board on the merits of the alien's claims of relief or protection from removal.

To ensure that aliens are aware of the consequences of filing a motion to reopen or reconsider prior to the expiration of voluntary departure, the rule amends 8 CFR 1240.11 to provide that the immigration judge will advise the alien of the consequences of accepting a grant of voluntary departure and the effect of any subsequent post-decision motion to reopen or reconsider. In particular, the alien will be advised that an order of voluntary departure shall be automatically terminated upon filing a motion to reopen or reconsider, as long as such a motion is filed before the voluntary departure period has expired.

Currently, aliens are advised in the notice of decision of the consequences of failing to depart under section 240B(d) of the Act (8 U.S.C. 1229c(d)) pursuant to an order of voluntary departure. See 8 CFR 1240.13(d). The additional notice proposed by this rule should help to avoid practical concerns that the alien was not fully aware of the consequences of filing a motion to reopen or reconsider during the voluntary departure period. By providing such notice to the alien at the time of the granting of voluntary

[8] The Board does not grant voluntary departure for a period of less than 30 days, which is the same period allowed for the filing of a petition for judicial review. Thus, we do not foresee any situation in which an alien would be filing a timely petition for review after overstaying the period allowed for voluntary departure.

departure at the conclusion of removal proceedings, the immigration judge can ensure that the alien understands the relevant principles applicable to the grant of voluntary departure. The proposed rule also provides that, if the alien appeals the immigration judge's decision to the Board, the Board's decision will provide notice to the alien with respect to the impact of filing a post-order administrative motion to reopen or reconsider.

In addition, this rule provides that the Board's decision will provide notice to the alien with respect to the impact of filing a petition for review. Since the immigration judge's order is appealable to the Board, an adverse immigration judge decision is not subject to a direct petition for review to the courts of appeals without a prior Board decision. See INA 242(d)(1) (8 U.S.C. 1252(d)(1)) (requiring exhaustion of all administrative remedies available to the alien as of right). Therefore, there is no reason to require the immigration judge to advise the alien of the consequences of filing a subsequent petition for review. However, once the Board has issued its final decision denying the alien's substantive claims and issuing a final order granting voluntary departure, this rule provides that the Board's final order will advise the alien that if the alien files a petition for review of the order before departing the United States, that will have the effect of terminating the grant of voluntary departure. At that point, the alien would be in the same legal position as other aliens who have been found to be removable and denied relief. The alien will no longer have the benefit and responsibility of voluntary departure, but the alien will be able to challenge the merits of the Board's decision before the court of appeals. If the court stays the execution of removal order, the alien would be able to remain while the petition for review is pending. If the alien does not prevail before the court, then, because the voluntary departure grant was terminated by filing the petition for review, he or she will not be subject to the penalties for failing to depart voluntarily.

VII. Other Issues Relating to Voluntary Departure

A. Voluntary Departure Bond

When the immigration judge grants voluntary departure at the conclusion of the removal proceedings, section 240B(b)(3) of the Act requires that the alien post a voluntary departure bond, "in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified." The current regulation at 8 CFR 1240.26(c)(3) provides that the voluntary departure bond shall be no less than $500 and must be posted with the district director within 5 business days of the immigration judge's order.

DHS is responsible for administering the bond process. In view of the transfer of authority to DHS, and the establishment of different adjudicatory and enforcement offices, this rule makes conforming changes to include references to the Immigration and Customs Enforcement (ICE) Field Office Director rather than the former terminology of district director.

Because a voluntary departure bond must be posted promptly after the issuance of the immigration judge's order granting voluntary departure, the Department recognizes that some aliens may post a voluntary departure bond and then later have their grant of voluntary departure automatically terminated under this rule because the alien has subsequently filed a motion to reopen or a petition for review. In all cases, as provided in section 240B(b)(3) of the Act, the purpose of the voluntary departure bond is to "ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified." Accordingly, this rule includes new provisions addressing the alien's liability for the voluntary departure bond depending on whether or not the alien does depart the United States within the time allowed. The fact that the grant of voluntary departure is subsequently terminated on account of the alien's own actions to challenge the final administrative order does not undo the purpose for the posting of the bond. Under any circumstances, the purpose of the bond is to encourage the alien to depart promptly as promised.

Thus, in any case where the alien can show he or she is physically outside the United States within the time allowed, the alien's voluntary departure bond will not be forfeited, and the bond can be cancelled or cash can be reclaimed by the alien after his or her departure from the United States. Once an alien departs the United States, the alien may follow the rules set forth by DHS for the voluntary departure bond, which may include proof that the alien departed within the time allowed even though the grant of voluntary departure was terminated pursuant to these rules. An alien who posted a bond will not forfeit it upon the filing of a petition for review, if the alien can establish that within 30 days after the filing of the petition for review he or she is physically outside the United States.

However, the proposed rule specifies that the alien's failure to depart during the time allowed will result in forfeiture of the alien's bond posted pursuant to a grant of voluntary departure. The purpose of the bond was to ensure that the alien does depart during the time allowed, as the alien had promised to do at the time of the immigration judge's order granting voluntary departure, and the alien's decision not to depart within that period would preclude the alien from recouping the amount of the bond. This is currently the result if the alien simply remains in the United States in violation of the grant of voluntary departure. This rule would further provide that the same result would continue to apply if the alien files a post-order motion to challenge the final order or a petition for review.[9] However, we are seeking public comment on this aspect of the rule.

Finally, the rule provides an exception if the alien is ultimately successful in overturning, reopening, or remanding the final administrative order that had denied the alien's claims on the merits relating to the alien's removability or eligibility for relief. Since, as discussed above, a grant of voluntary departure at the conclusion of removal proceedings is only relevant if the alien has already been found to be removable and ineligible for relief, a subsequent decision overturning, reopening, or remanding the denial of the alien's claims on the merits means that the issue of voluntary departure is rendered moot with respect to the voluntary departure bond.

B. Failure To Post the Mandatory Voluntary Departure Bond

The existing regulations provide that, if the required voluntary departure bond is not posted within 5 business days, the grant of voluntary departure shall vacate automatically and the alternate order of removal will take effect on the following day. 8 CFR 1240.26(c)(3).

Recently, the Board addressed issues relating to the failure to post a voluntary departure bond in *Matter of Diaz-Ruacho*, 24 I&N Dec. 47 (BIA 2006). In that case, the alien was granted voluntary departure but failed to post the voluntary departure bond. The Board denied the alien's appeal and reinstated the period for voluntary departure. Then, after the time allowed

[9] This rule provides that the filing of a motion to reopen, motion to reconsider, or a petition for review (within the time allowed for voluntary departure) automatically terminates the grant of voluntary departure. The rule does not provide that the granting of voluntary departure is void ab initio; it merely means that the continuing obligation to depart within the time allowed is terminated.

for voluntary departure had already expired, the alien filed a motion to reopen in order to submit additional evidence in support of his unsuccessful application for cancellation of removal. Initially, the Board denied the motion because the alien's failure to depart meant that the alien had become subject to the statutory 10-year bar on eligibility for cancellation of removal.

In its precedent decision in *Diaz-Ruacho*, the Board held that, because the alien failed to post the voluntary departure bond as required, the order granting voluntary departure never took effect. In its decision, the Board concluded that posting of the bond is a condition precedent, and therefore the consequences and benefits of voluntary departure did not attach until the bond was posted. The Board found additional support for this conclusion in the language of the immigration judge's order and in the regulation, which provided that the order granting voluntary departure "shall vacate automatically" upon the failure to timely post bond. See 8 CFR 1240.26(c)(3). This meant that the alien was not subject to penalties under section 240B(d) of the Act for failure voluntarily to depart, and thus he is still eligible for cancellation of removal.

Though it may be a permissible reading of the language of the current regulations, this result is not consistent with the statutory purpose and is not a sound policy approach because the alien's own default in failing to post a voluntary departure bond, as the alien was just ordered to do in connection with the order granting voluntary departure, should not be the trigger that exempts the alien from the penalties for failure to depart. The purpose of the bond requirement, as stated in the statute, is to "ensure that the alien departs within the time specified," and the bond requirement should not be interpreted to stand this statutory purpose on its head by providing a ready means for aliens to exempt themselves from the penalties for failure to depart. Moreover, using the failure to post a bond as the trigger that vitiates the grant of voluntary departure does not make practical sense because it is not an open, discrete, affirmative step and there is no ready process for highlighting the absence of a bond. In particular, there is no reason to believe that the government counsel or the immigration judge would be made aware at the time in many or most cases that a default had even occurred and that the grant of voluntary departure had been vacated. In many such cases, the Board may be unaware at the time of a final order reinstating the period of voluntary departure that the alien's voluntary departure grant had already been terminated by default even before the alien filed the appeal with the Board. Under the approach of *Diaz-Ruacho*, it is entirely likely in many cases that an alien may depart from the United States within the time allowed even though the grant of voluntary departure had already been vacated because of the alien's failure to post a bond. Later, when it is determined that the alien had failed to post the bond at the time as required, then there would be an issue whether such aliens may end up being subject to the 10-year bar on admissibility under section 212(a)(9)(A)(ii) of the Act because they actually departed under the alternate order of removal rather than a grant of voluntary departure.

The Attorney General has decided to amend the language regarding failure to post bond to make clear that the failure to post a voluntary departure bond does not exempt the aliens from the obligation to depart nor does it exempt them from the penalties for failure to depart voluntarily. An alien who is granted voluntary departure remains liable for the amount of the bond if he or she voluntarily fails to depart during the period of time allowed—whether or not the alien files a motion to reopen or reconsider or a petition for judicial review, or simply remains in the United States in violation of the grant of voluntary departure, except as noted above.

It is important, however, to have other provisions in place to ensure that the voluntary departure bond, when required, is posted within the period of 5 business days. Since the purpose of the voluntary departure bond is to ensure that the alien does depart from the United States, as promised, this proposed rule provides that the failure to post the bond, when required, within 5 business days is a violation of the requirement of section 240B(b)(3) of the Act and may be considered (i) in evaluating whether the alien should be detained based on risk of flight, and (ii) as a negative discretionary factor with respect to any discretionary form of relief.

In addition, we seek public comment on whether the rule should also provide additional sanctions for aliens who fail to post the required voluntary departure bond by the fifth business day. One such possibility may be to provide that an alien who posts a required voluntary departure bond after the fifth business day will not be able to get a full refund of the bond amount—e.g., a 20% reduction of the amount to be returned to the alien on account of a late posting of a required voluntary departure bond.

Finally, this proposal also amends 8 CFR 1241.1(f) with respect to an alien who waives appeal at the conclusion of the immigration judge proceedings, but fails to post the required voluntary departure bond within five business days, as he or she had agreed to do in connection with the grant of voluntary departure. The waiver of appeal by both parties means that the immigration judge's order is an administratively final order. If an alien who has waived appeal fails to post the required voluntary departure bond within the time allowed, the alternate order of removal will then take effect after the failure to timely post bond. This proposal ensures that aliens who waive appeal before the immigration judge still have an incentive to post bond as they agreed to do, since the alien's failure to do so would result in a final order after the fifth business day, and it preserves DHS's authority to detain an alien who fails to timely post bond, as he or she is then under a final order of removal. However, if the alien thereafter does depart within the voluntary departure period, the alien will not be subject to the penalties under 240B(d) of the Act (8 U.S.C. 1229a(c)(4)(B)) or inadmissibility under 212(a)(9)(A) of the Act.

C. Providing Notice to the Board That the Voluntary Departure Bond Has Been Posted

As noted above, an alien whose request for voluntary departure is granted by an immigration judge at the conclusion of removal proceedings is required to post a voluntary departure bond within five business days in an amount necessary to ensure that the alien does depart the United States within the time allowed. The bond is posted at a DHS office, so under current practice neither the immigration judge nor the Board is aware of whether an alien has complied with the obligation to post a bond as he or she had promised to do at the time of the grant of voluntary departure.

This proposed rule would require that aliens who have been granted voluntary departure submit proof of having posted the required voluntary departure bond in connection with the filing of an appeal with the Board. Since the alien is obligated to post a bond within five business days of the immigration judge's order, but the appeal to the Board is due within 30 days of the immigration judge's order, the alien will have ample time available to obtain proof of the posting of the bond.

As in other respects, the burden of proof is on an alien to establish eligibility for a discretionary form of relief from removal, see section 240(c)(4)(B) of the Act; 8 CFR 1240.8(d), so it is reasonable to provide that aliens who are granted voluntary departure are expected to provide proof of compliance with one of the key obligations under the grant of voluntary departure. If the alien does not provide timely proof to the Board that the required voluntary departure bond has been posted, the Board will not include a grant of voluntary departure in its final order.[10]

D. Amount of the Monetary Penalty for Failure To Depart Voluntarily

Section 240B(d)(1) of the Act provides that, in addition to being barred from eligibility for certain discretionary forms of relief for a period of 10 years, an alien who fails to depart voluntarily as required "shall be subject to a civil penalty of not less than $1,000 and not more than $5,000." However, there is no process for the immigration judge to set the specific amount of the penalty, and the DHS regulations also do not provide a means to calculate the specific amount of the penalty. Thus, though the grants of voluntary departure issued by immigration judges and the Board routinely include warnings about the imposition of a civil penalty for failure to depart voluntarily, as a practical matter there appears to have been very little means actually to impose and collect such civil penalties on aliens who overstay their period of voluntary departure.

In order to give effect to the statutory provision providing for a civil penalty, and to simplify the administrative process and provide clear advance notice to the aliens who are seeking voluntary departure, the proposed rule would set a presumptive amount of $3,000 as the civil penalty for failure to depart. This amount—which is identical to provisions in the immigration bills passed by the House and Senate in the 109th Congress (S. 2611 and H.R. 4437)—would be applicable in every case in the future unless the immigration judge specifically set a higher figure at the time of granting voluntary departure.

The collection of the civil penalty is within the enforcement responsibility of DHS, and not the immigration judge or the Board. However, in any case where an alien is later seeking discretionary relief, the immigration judge or the Board may properly take account of evidence that the alien has failed to pay the required civil penalty, as a relevant discretionary factor.

[10] As noted in the previous section of this supplementary information, however, an alien's failure to post a voluntary departure bond does not exempt the alien from liability for the amount of the bond. An alien who fails to post the required bond but appeals the immigration judge's decision will not be granted voluntary departure by the Board, but such an alien does remain liable for the amount of the voluntary departure bond that he or she had expressly agreed to post.

VIII. Regulatory Requirements

A. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual aliens and does not affect small entities, as that term is defined in 5 U.S.C. 601(6).

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year and also will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

The Attorney General has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects

8 CFR Part 1240

Administrative practice and procedure, Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, for the reasons stated in the preamble, chapter V of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

1. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1229(c)(e), 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100, (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

2. Section 1240.11 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 1240.11 Ancillary matters, applications.

* * * * *

(b) * * * The immigration judge shall advise the alien of the consequences of filing a post-decision motion to reopen or reconsider prior to the expiration of the time specified by the immigration judge for the alien to depart voluntarily.

* * * * *

3. Section 1240.26 is amended by:

a. Adding new paragraphs (b)(3)(iii) and (b)(3)(iv);

b. Revising paragraph (c)(3);

c. Adding new paragraphs (e)(1) and (e)(2);

d. Adding a new sentence at the end of paragraph (f); and by

e. Adding new paragraphs (i) and (j), to read as follows:

§ 1240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

* * * * *

(b) * * *

(3) * * *

(iii) If the alien files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall be terminated automatically, and the alternate order of removal will take effect immediately. The penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply if the alien has filed a post-decision motion to reopen or reconsider during the period allowed for voluntary departure. The immigration judge shall advise the alien of the provisions of this paragraph (b)(3)(iii).

(iv) The automatic termination of a grant of voluntary departure and the effectiveness of the alternative order of removal shall not affect, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter.

(c) * * *

(3) *Conditions.* The immigration judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States. The immigration judge shall advise the alien of the applicable conditions, including the provisions of this paragraph (c)(3). In all cases under section 240B(b) of the Act:

(i) The alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien departs within the time specified, but in no case less than $500. The voluntary departure bond shall be posted with the ICE Field Office Director within 5 business days of the immigration judge's order granting voluntary departure, and the ICE Field Office Director may, at his or her discretion, hold the alien in custody until the bond is posted. Because the purpose of the voluntary departure bond is to ensure that the alien does depart from the United States, as promised, the failure to post the bond, when required, within 5 business days may be considered in evaluating whether the alien should be detained based on risk of flight, and also may be considered as a negative discretionary factor with respect to any discretionary form of relief. The alien's failure to post the required voluntary departure bond within the time required does not terminate the alien's obligation to depart within the period allowed or exempt the alien from the consequences for failure to depart voluntarily during the period allowed. However, if the alien had waived appeal of the immigration judge's decision, the alien's failure to post the required voluntary departure bond within the period allowed means that the alternate order of removal takes effect immediately pursuant to 8 CFR 1241.1(f), provided that if the alien does depart the United States during the period allowed for voluntary departure, he or she shall not be subject to the penalties at INA 240B(d)(1) or to inadmissibility under section 212(a)(9)(A) of the Act.

(ii) An alien who has been granted voluntary departure shall, in connection with the filing of an appeal with the Board, submit timely proof of having posted the required voluntary departure bond. If the alien does not provide timely proof to the Board that the required voluntary departure bond has been posted with DHS, the Board will not include a grant of voluntary departure in its final order.

(iii) If the alien files a post-order motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall terminate automatically and the alternate order of removal will take effect immediately. If the alien files a post-order motion to reopen or reconsider during the period allowed for voluntary departure, the penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply.

(iv) The automatic termination of an order of voluntary departure and the effectiveness of the alternative order of removal shall not impact, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter.

(v) If after posting the voluntary departure bond the alien satisfies the condition of the bond by departing the United States prior to the expiration of the period granted for voluntary departure, and if proof of the alien's departure is timely furnished to the ICE Field Office Director, the bond may be canceled. The bond also may be cancelled if, after filing a petition for review, the alien can establish that within 30 days after such filing he or she is physically outside the United States. In order for the bond to be cancelled, the alien must provide proof of departure by such methods as the ICE Field Office Director may prescribe.

(vi) Because the purpose of the voluntary departure bond is to ensure that the alien departs the United States within the time allowed, the automatic termination of a grant of voluntary departure, on account of a post-order motion to reopen or reconsider or a petition for review filed by the alien, does not result in the cancellation of the voluntary departure bond if the alien fails to depart within the time allowed. However, the voluntary departure bond may be canceled by such methods as the ICE Field Office Director may prescribe if the alien is subsequently successful in overturning, reopening, or remanding the final administrative order.

* * * * *

(e) * * *

(1) *Motion to reopen or reconsider filed during the voluntary departure period.* The filing of a motion to reopen or reconsider prior to the expiration of the period allowed for voluntary departure has the effect of automatically terminating the grant of voluntary departure, and accordingly does not toll, stay, or extend the period allowed for voluntary departure under this section. See paragraphs (b)(3)(iii) and (c)(3)(ii) of this section.

(2) *Motion to reopen or reconsider filed after the expiration of the period allowed for voluntary departure.* The filing of a motion to reopen or a motion to reconsider after the time allowed for voluntary departure has already expired does not in any way impact the period of time allowed for voluntary departure under this section. The granting of a motion to reopen or reconsider that was filed after the penalties under section 240B(d) of the Act had already taken effect, as a consequence of the alien's prior failure voluntarily to depart within the time allowed, does not have the effect of vitiating or vacating those penalties, except as provided in section 240B(d)(2) of the Act.

(f) * * * The filing of a motion to reopen or reconsider or a petition for review has the effect of automatically terminating the grant of voluntary departure, and accordingly does not toll, stay, or extend the period allowed for voluntary departure.

* * * * *

(i) *Effect of filing a petition for review.* If, prior to departing the United States, the alien files a petition for review pursuant to section 242 of the Act (8 U.S.C. 1252), or any other judicial challenge to the administratively final order, any grant of voluntary departure shall terminate automatically upon the filing of the petition or other judicial

challenge and the alternate order of removal entered pursuant to paragraph (d) shall immediately take effect. The Board shall advise the alien of the condition provided in this paragraph in writing as part of an order reinstating the immigration judge's grant of voluntary departure. The automatic termination of a grant of voluntary departure and the effectiveness of the alternative order of removal shall not affect, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter. Since the grant of voluntary departure is terminated by the filing of the petition for review, the alien will be subject to the alternate order of removal, but the penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply to an alien who files a petition for review, and who remains in the United States while the petition for review is pending.

(j) *Penalty for failure to depart.* The civil penalty for failure to depart, pursuant to section 240B(d)(1)(A) of the Act, shall be set at $3,000 unless the immigration judge specifically orders a higher amount at the time of granting voluntary departure. The immigration judge shall advise the alien of the amount of this civil penalty at the time of granting voluntary departure.

* * * * *

PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

4. The authority citation for part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4).

5. Section 1241.1 is amended by revising paragraph (f), to read as follows:

§ 1241.1 Final order of removal.

* * * * *

(f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period except as provided in the following sentence, or upon the failure to post a required voluntary departure bond if the respondent has waived appeal. If the respondent has filed a timely appeal with the Board, the order shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of the voluntary departure period granted or reinstated by the Board or the Attorney General.

Dated: November 27, 2007.

Michael B. Mukasey,

Attorney General.

[FR Doc. E7–23289 Filed 11–29–07; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0258; Directorate Identifier 2007–CE–090–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–400, AT–500, AT–600, and AT–800 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2007–13–17, which applies to all Air Tractor, Inc. (Air Tractor) Models AT–602, AT–802, and AT–802A airplanes. AD 2007–13–17 currently requires you to repetitively inspect the engine mount for any cracks, repair or replace any cracked engine mount, and report any cracks found to the FAA. Since we issued AD 2007–13–17, Air Tractor has learned of a Model AT–502B with a crack located where the lower engine mount tube is welded to the engine mount ring. In addition, Snow Engineering Co. has developed gussets that, when installed according to their service letter, terminate the repetitive inspection requirement. Consequently, this proposed AD would retain the inspection actions of AD 2007–13–17 for Model AT–602, AT–802, and AT–802A airplanes, including the compliance times and effective dates; establish new inspection actions for the AT–400 and AT–500 series airplanes; incorporate a mandatory terminating action for all airplanes; and terminate the reporting requirement of AD 2007–13–17. We are proposing this AD to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by January 29, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Pl, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA–2007–0258; Directorate Identifier 2007–CE–090–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

Two reports of Model AT–802A airplanes with cracked engine mounts (at 2,815 hours time-in-service (TIS) and 1,900 hours TIS) caused us to issue AD 2007–13–17, Amendment 39–15121 (72 FR 36863, July 6, 2007). AD 2007–13–17 currently requires the following on all Air Tractor Models AT–602, AT–802, and AT–802A airplanes:

- Inspect (initially and repetitively) the engine mount for any cracks;
- Repair or replace any cracked engine mount; and
- Report any cracks found to the FAA.

Since we issued AD 2007–13–17, Air Tractor notified the FAA of a Model AT–502B airplane with a crack located where the lower engine mount tube is welded to the engine mount ring. The airplane had 8,436 total hours TIS. The cracking is similar to what prompted us to issue AD 2007–13–17.

The Model AT–502B engine mount is the same design used in the Models AT–400, AT–400A, AT–402, AT–402A, AT–402B, AT–502, and AT–503A airplanes. The Model AT–502A airplane uses the same engine mount design as the airplanes affected by AD 2007–13–17. Therefore, we determined that these airplane models should be subject to the actions of AD 2007–13–17.

Currently, the FAA is aware of the following airplanes that have had cracked engine mounts:

- 1 Model AT–502B;
- 3 Model AT–602; and
- 11 Model AT–802/802A.

This condition, if not corrected, could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

In addition, Snow Engineering Co. developed gussets for an FAA-approved repair scheme to AD 2007–13–17. Snow Engineering Co. tested the engine mount with the gussets installed; and based on their test data, which has been approved by the FAA, installation of the gussets terminates the repetitive inspection requirement.

Relevant Service Information

We have reviewed Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007.

The service information describes procedures for:

- Performing a visual inspection of the engine mount for cracks;
- Repairing the engine mount if cracks are found; and
- Adding gussets to reinforce the engine mount and terminate the inspection requirement.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2007–13–17 with a new AD that would retain the inspection actions of AD 2007–13–17 for Models AT–602, AT–802, and AT–802A airplanes, including the compliance times and effective dates; establish new inspection actions for the AT–400 and AT–500 series airplanes; incorporate a mandatory terminating action for all airplanes; and terminate the reporting requirement of AD 2007–13–17. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 1,264 airplanes in the U.S. registry, including those airplanes affected by AD 2007–13–17.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1.5 work-hours × $80 per hour = $120	$0	$120	$151,680

We estimate the following costs to do the repair/modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
24 work-hours × $80 per hour = $1,920	$80	$2,000	$2,528,000

The estimated total cost on U.S. operators includes the cumulative costs associated with AD 2007–13–17 and those airplanes and actions being added in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5527) 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–13–17, Amendment 39–15121 (72 FR 36863, July 6, 2007), and adding the following new AD:

Air Tractor, Inc.: Docket No. FAA–2007–0258; Directorate Identifier 2007–CE–090–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by January 29, 2008.

Affected ADs

(b) This AD supersedes AD 2007–13–17, Amendment 39–15121.

Applicability

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

Model	Serial numbers
AT–400, AT–400A, AT–402, AT–402A, and AT–402B	–0001 through –1175.
AT–502, AT–502A, AT–502B, and AT–503A	–0001 through –2597.
AT–602	–0001 through –1141.
AT–802 and AT–802A	–0001 through –0227.

Unsafe Condition

(d) This AD results from a report of a Model AT–502B airplane with a crack located where the lower engine mount tube is welded to the engine mount ring. The airplane had 8,436 total hours time-in-service (TIS). We are issuing this AD to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

Compliance

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

Affected airplanes	Compliance	Procedures
(i) *For all Models AT–602, AT–802, and AT–802A airplanes.*	Initially before the airplane reaches a total of 1,300 hours TIS or within the next 100 hours TIS after August 10, 2007 (the effective date of AD 2007–13–17), whichever occurs later. Repetitively thereafter at intervals not to exceed 300 hours TIS.	Follow Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007, or Snow Engineering Co. Service Letter #253, revised January 22, 2007.
(ii) *For all Model AT–502A airplanes*	Initially before the airplane reaches a total of 1,300 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively thereafter at intervals not to exceed 300 hours TIS.	Follow Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007.
(iii) *For all Models AT–400, AT–400A, AT–402, AT–402A, AT–402B, AT–502, AT–502B, and AT–503A airplanes.*	Initially within the next 12 months after the effective date of this AD. Repetitively thereafter at intervals not to exceed 12 months.	Follow Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007.

(1) *For all airplanes with less than 5,000 hours total TIS that do not have gussets installed on the engine mount in accordance with Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007:* Visually inspect the engine mount as follows:

(2) *For all airplanes:* Before further flight after any inspection required by paragraph (e)(1) of this AD where crack damage is found, repair and modify the engine mount by installing gussets following Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007. This modification terminates the repetitive inspections required in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD.

(3) *For all airplanes:* Before the airplane reaches 5,000 hours total TIS after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; inspect, repair if cracked, and modify the engine mount by installing gussets following Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007. This modification terminates the repetitive inspections required in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD.

Note: As a terminating action to the repetitive inspections required in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD, you may install the gussets before finding cracks or reaching 5,000 hours total TIS.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Forth Worth Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Pl, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is Docket No. FAA–2007–0258; Directorate Identifier 2007–CE–090–AD.

Issued in Kansas City, Missouri, on November 23, 2007.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–23229 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7744]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the table to a proposed rule published in the **Federal Register** of November 2, 2007. This correction clarifies the table representing the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for Tulsa County, Oklahoma, and Incorporated Areas; specifically, for flooding sources "Horsepen Creek Tributary B" and "Horsepen Creek Tributary B Tributary," that was previously published.

DATES: Comments to be submitted on or before January 31, 2008.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction

In proposed rule FR Doc. E7–21595, beginning on page 62182 in the issue of November 2, 2007, make the following corrections, in the table published under the authority of 44 CFR 67.4. On page 62182, in § 67.4, in the table with center heading Tulsa County, Oklahoma, and Incorporated Areas, the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for flooding source "Horsepen Creek Tributary B", needs to be corrected to read as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
*	*	*	*	*
Tulsa County, Oklahoma, and Incorporated Areas				
*	*	*	*	*
Horsepen Creek Tributary B	Confluence with Horsepen Creek	None	+642	Unincorporated Areas of Tulsa County.
	Approximately 370 ft upstream of confluence with Horsepen Creek Tributary B Tributary.	None	+644	
Horsepen Creek Tributary B Tributary.	Confluence with Horsepen Creek Tributary B	None	+643	Unincorporated Areas of Tulsa County.
	Approximately 2800 ft upstream of confluence with Horsepen Creek Tributary B.	None	+650	
*	*	*	*	*

Dated: November 19, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–23215 Filed 11–29–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AU32

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 11), incorporating the Final Supplemental Environmental Impact Statement (FSEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 11. Amendment 11 was developed by the Council to control the capacity of the open access general category fleet. Amendment 11 would establish a new management program for the general category fishery, including a limited access program with individual fishing quotas (IFQs) for qualified general category vessels, a specific allocation for general category fisheries, and other measures to improve management of the general category scallop fishery.

DATES: Comments must be received on or before January 29, 2008.

ADDRESSES: An FSEIS was prepared for Amendment 11 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 11, including the FSEIS and the IRFA, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by 0648–AU32, by any one of the following methods:

- *Electronic Submissions*: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- Fax: (978) 281–9135, Attn: Peter Christopher.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Amendment 11."

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, phone 978–281–9288, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The general category scallop fishery is currently an open access fishery that allows any vessel to fish for up to 400 lb (181.44 kg) of scallops, provided the vessel has been issued a general category or limited access scallop permit. This open access fishery was established in 1994 by Amendment 4 to the FMP to allow vessels fishing in non-scallop fisheries to catch scallops as incidental catch, and to allow a small-scale scallop fishery to continue outside of the limited access and effort control programs aimed at the large-scale scallop fishery. Over time, the overall participation in the general category fishery has increased. In 1994, there were 1,992 general category permits issued. By 2005 that number had increased to 2,950. In 1994, there were 181 general category vessels that landed scallops, while in 2005 there were over 600.

Out of concern about the level of fishing effort and harvest from the general category scallop fleet, the Council recommended that a **Federal Register** notice should be published to notify the public that the Council would consider limiting entry to the general category scallop fishery as of a specified control date. NMFS subsequently established the control date of November 1, 2004 (69 FR 63341, November 1, 2004). In January of 2006, the Council began the development of Amendment 11 to evaluate alternatives for a limited access program and other measures for general category vessels. The Council held 35 meetings open to the public on Amendment 11 between January 2006 and June 2007. After considering a wide range of issues, alternatives, and public input, the Council adopted a draft supplemental environmental impact statement (DSEIS) for Amendment 11 on April 11, 2007. Following the public comment period that ended on June 18, 2007, the Council adopted Amendment 11 on June 20, 2007.

Amendment 11 includes the following: A limited access program for the general category fishery establishing three new limited access general category (LAGC) scallop permits (IFQ scallop permit, Northern Gulf of Maine (NGOM) scallop permit, and Incidental scallop permit); initial application procedures for an LAGC scallop permit; LAGC scallop permit provisions (initial eligibility, landings history, confirmation of permit history (CPH), permit transfers, permit splitting, qualification restriction, appeal of LAGC scallop permit denial, vessel replacements, ownership cap, voluntary relinquishment of eligibility, and permit renewals and CPH issuance); provisions for limited access scallop vessels fishing under general category rules; allocation of the total annual projected scallop catch to the general category fishery under the IFQ program; IFQs for IFQ scallop vessels; measures for the transition period to IFQ; a mechanism to allow voluntary sectors in the general category fishery; separate management measures for a NGOM scallop management area; monitoring provisions, including a requirement for all LAGC scallop vessels to operate vessel monitoring systems (VMS) with catch reporting requirements; a change issuance date of general category permit; a measure to clarify the maximum trawl sweep size restriction under the scallop regulations; and an allowance for LAGC scallop vessels to possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line.

Amendment 11 would establish the percentage of scallop catch allocated to the general category fleet and would

establish the IFQ program. These percentages would be applied to specific total allowable catch (TAC) amounts that were developed by the Council as part of Framework 19 to the FMP, which will establish scallop fishery management measures for the 2008 and 2009 fishing years. After determining the allowable levels of fishing based on updated survey information and fishing mortality targets, the TAC that would be allocated to the current limited access fleet and the IFQ scallop vessels, as well as the NGOM TAC and estimated landings under the Incidental catch LAGC scallop permit, would be specified through a separate rulemaking for Framework 19. Framework 19 also will specify management measures for the 2008 and 2009 fishing years that would be recommended if Amendment 11 is not approved.

Public comments are being solicited on Amendment 11 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 11 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 11 to be considered in the approval/disapproval decision on the amendment. All comments received by January 29, 2008, whether specifically directed to Amendment 11 or the proposed rule for Amendment 11, will be considered in the approval/disapproval decision on Amendment 11. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 11. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: November 26, 2007.

Emily H. Menashes,

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

[FR Doc. E7–23266 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070816465–7466–01]

RIN 0648–AV96

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Bycatch Management

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to repeal regulations providing for a groundfish vessel incentive program (VIP) that was designed to reduce the rate at which Pacific halibut and red king crab are taken as incidental catch in Alaska groundfish trawl fisheries. The VIP has not performed as intended because of the cost associated with enforcement, the relatively small number of vessels impacted by the regulation, and the implementation of more effective bycatch reduction programs. This action is necessary to reduce a regulatory burden on the industry and to reduce the administrative costs necessary to support a program no longer considered an effective means to reduce bycatch rates.

DATES: Written comments must be received by December 31, 2007.

ADDRESSES: You may submit comments, identified by 0648–AV96, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*;
- Mail: Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; Attn: Ellen Sebastian, Records Officer;
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907–586–7557, Attention: Sue Salveson.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the addresses stated above or from the Alaska Region NMFS website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Ben Muse, 907–586–7228, or *ben.muse@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Fisheries off Alaska targeting groundfish incidentally catch other species as well. Some of these non-groundfish species are themselves the objects of valuable targeted fisheries and retention of these species is prohibited in the groundfish fishery. These prohibited species include Pacific halibut, Chinook and "Other" salmon, several crab species, and herring. Measures to restrict the catch of these species have been incorporated into the FMPs for the GOA and the BSAI and into regulation. Among these measures are prohibited species catch (PSC) limits. PSC limits restrict the amount of a prohibited species that may be taken incidentally in a groundfish fishery. Groundfish fisheries are routinely closed in all or part of a management area when a PSC limit is reached. These closures are expensive for industry because they mean that valuable groundfish are left unharvested.

Section 3.6.4 of the GOA FMP authorizes regulations to reduce halibut bycatch rates in fisheries subject to halibut PSC limits to increase the opportunity to fish groundfish TACs before established PSC limits are reached. Specifically, this provision is intended to encourage individual vessels to maintain average bycatch

rates within acceptable performance standards and discourage fishing practices that result in excessively high bycatch.

Section 3.6.4 of the BSAI FMP allows for implementation of regulatory measures to provide incentives to individual vessels to reduce bycatch rates of prohibited species for which PSC limits are established. While the GOA provisions are limited to halibut, the BSAI provisions authorize the creation of, and have been used to create, incentive programs for red king crab, as well as halibut. This provision has the same purpose as the corresponding provision in the GOA FMP, which is to increase the opportunity to harvest groundfish TACs.

Vessel Incentive Program

Regulations at 50 CFR 679.21(f) implement a vessel incentive program (VIP) under the authority of the FMPs. The program creates incentives for individual groundfish trawl operators to reduce their incidental catch rates of halibut and red king crab by imposing penalties on operations whose incidental catch rates exceed specified standards. Under the program, the Alaska Regional Administrator is required to publish fishery-specific bycatch rate standards for halibut in the GOA and BSAI, and red king crab in the BSAI two times a year. Observer data on the catch composition of harvests in subject fisheries is statistically analyzed. Vessels that appear to have exceeded the published bycatch rate standards are subject to prosecution. The program became effective in mid–1991.

Currently, vessels are subject to the VIP requirement if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership that receives unsorted codends from the vessel, at any time during a weekly reporting period and the vessel is assigned to one of six trawl fisheries. As a practical matter, only groundfish trawl vessels carrying observers are subject to the VIP.

The trawl fisheries defined in the regulations that are subject to the VIP requirement include two GOA fisheries (GOA midwater pollock and GOA other trawl) and four BSAI fisheries (BSAI midwater pollock, BSAI yellowfin sole, BSAI bottom pollock, and BSAI other trawl). A vessel is assigned a fishery group based on the species composition in observed samples of its groundfish catch.

Regulations specify that a vessel's PSC rate during any fishing month may not exceed the bycatch rate standard specified by NMFS. Regulations require that bycatch rate standards for each fishery be published twice a year in the **Federal Register**. These standards are established for Pacific halibut in the GOA and BSAI trawl fisheries; the non-pollock trawl fisheries also are held to a red king crab bycatch rate standard in Zone 1 of the BSAI. A vessel is non-compliant with a bycatch rate standard if the vessel's bycatch rate for a fishing month exceeds the bycatch rate standard established for that fishery.

Calculation of VIP bycatch rate standards and monitoring of PSC and target catch is dependent on data collected at-sea by observers. Observers sample hauls and gather information on the date and target species harvested, area of catch, total round weight of groundfish catch, total round weight of halibut PSC, and number of red king crab PSC. The Alaska Fisheries Science Center has developed observer sampling protocols, and algorithms for statistical analysis of bycatch information. The information is used to make statistical inferences about PSC rates for a vessel in a given month for a specific target species.

The VIP regulations require publication of the bycatch rate standards in the **Federal Register** for 30 days before they take effect, unless NMFS finds for good cause that such notification and public comment are impracticable, unnecessary, or contrary to the public interest. Bycatch rate standards are season and fishery specific. The Alaska Regional Administrator is required to publish bycatch rate standards for the first half of the year (before January 1) and for the second half of the year (before July 1). Although standards are required to be published bi-annually, the Regional Administrator may adjust bycatch rate standards as frequently as he or she considers appropriate. VIP bycatch rate standards, however, have not been published since the first half of 2003.

Regulations governing the determination of halibut and red king crab bycatch rates for individual vessels are at 50 CFR 679.21(f)(7) and (f)(8). Observers sample hauls and collect information about the Federal reporting area of harvest, round weight of groundfish, round weight of halibut, and number of red king crab. For VIP PSC rate calculation, observers randomly predetermine the hauls to sample, and randomly sample a minimum of 100 kg of fish from throughout the haul. Observers report to NMFS at least weekly with the information from sampled hauls, and allow the vessel operator to examine the data.

At the end of a month in which an observer has sampled at least 50 percent of the vessel's total hauls (retrieved while an observer was onboard), the Regional Administrator calculates the vessel's PSC rate for halibut and red king crab based on observer data for each of the fisheries to which the vessel was assigned based on the vessel's catch composition during the month. The PSC rates reflect the weight of groundfish and halibut and the number of red king crab that were actually sampled. No extrapolations are made to the weight and numbers in sampled hauls, or the weight and numbers harvested in observed and unobserved hauls during the month.

Enforcement actions may be taken if a vessel's bycatch rate for a fishing month exceeds the bycatch rate standard established for that fishery.

The VIP imposes potential costs on fishermen with high observed prohibited species bycatch rates. This has created an incentive for fishermen to reduce these observed rates. They can do this by changing the patterns of their fishing behavior. They can also do this by manipulating the observer reported rates. For example, fishing operations may arrange to pre-sort their catches, to eliminate some or all of the prohibited species before these reach the observer station. These are illegal actions, and their incidence is unknown. However, it is known that the VIP increases the incentives for these actions. Anecdotal evidence from knowledgeable persons in the Observer Program and NOAA Enforcement suggests that the incidence of these activities may be serious. Pre-sorting may affect the accuracy of observer reports of halibut and red king crab bycatch and bycatch rates.

Effective enforcement of the VIP imposes significant costs on the observer program and NMFS. Resources for the management of the program and enforcement of the rule have to be taken from other high priority management and enforcement responsibilities. It also is not clear from experience with the program that it has had, or will have, a significant deterrent effect or has led to the harvest of significant additional amounts of target groundfish. Part of the problem may be the limited coverage of the program. As a practical matter, sufficient observations of hauls usually only occur on vessels with 100 percent observer coverage. This has a tendency to limit the program to trawl vessels equal to or greater than 125 feet length overall (LOA); these are the trawlers that are required to carry that level of coverage.

The authorizing provisions in both FMPs make clear that the purpose of a VIP is to enable industry to harvest larger proportions of groundfish TACs.

Repeal of the VIP will not affect managers' ability to protect the sustainability of halibut and red king crab stocks because the groundfish fisheries will continue to be managed to maintain bycatch within the PSC limits. Repeal of the VIP also will not affect managers' ability to protect the sustainability of groundfish stocks by maintaining harvests within TAC and Acceptable Biological Catch (ABC) limits.

Furthermore, the establishment of fishery cooperatives and the stringent catch monitoring provisions implemented by NMFS to monitor cooperative-specific allocations of groundfish and prohibited species, including halibut and red king crab, are other means to reduce bycatch. Cooperative members receive a joint allocation of PSC, and this creates incentives and capabilities for cooperatives to control individual operation PSC bycatch rates to maximize the value of the cooperative's PSC allocation.

In June 2003 the Council initiated an amendment to repeal the VIP given concerns about its effectiveness, concerns over its potential to absorb resources that could be utilized by other, important management and enforcement functions, concerns about the incentive created for pre-sorting of bycatch, and developments in other bycatch reduction programs that have occurred since 1991. In October 2003, the Council reviewed a NMFS discussion paper and made a preliminary identification of alternatives for analysis. The Council requested that a discussion of alternatives for analysis be placed on the agenda in December 2003 for additional public testimony. In December 2003 the Council reiterated its approval of the alternatives it had adopted in October and scheduled initial review of the draft for its April 2004 meeting.

In October 2006 the Council initially reviewed the EA/RIR/IRFA and (a) identified repeal of the VIP regulations, without modification of authorizing language in the FMPs, as its preferred alternative; (b) approved release of the EA/RIR/IRFA for public review; and (c) scheduled final action for its December 2006 meeting in Anchorage, Alaska. In December 2006 the Council took final action, adopting the preferred alternative it had identified in October 2006.

Proposed Regulatory Changes

This action would repeal 50 CFR 679.21(f), which imposes the requirement for compliance with the VIP and describes procedures for assignment of vessels to fisheries, notification of bycatch rate standards, analysis of the factors on which bycatch rate standards are to be based, public comment, publication of notification in the **Federal Register**, use of observer data to calculate rates, calculation of individual vessel rates, and determining whether a vessel is in compliance with bycatch rate standards.

This action also would repeal 50 CFR 679.7(a)(5) which specifically prohibits vessels from exceeding a bycatch rate standard specified under 50 CFR 679.21(f).

This proposed rule would not modify the BSAI and GOA FMPs, which contain language permitting the Council to adopt a VIP. Therefore, the Council would retain the authority to develop a new VIP if it chooses.

Regulations at 50 CFR 679.50(k) authorize NMFS Alaska Region to publish individual vessel bycatch rates for specified prohibited species. Nothing in this proposed action would affect this authority, and the Alaska Region will continue to publish these bycatch rates on its website.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. A summary of the remainder of the analysis follows.

In 2005 a total of 78 catcher vessels and 3 catcher/processor vessels reported gross annual receipts of $4.0 million or less from fishing groundfish and other species using trawl gear in the GOA, and can therefore be characterized as small entities under the SBA size standards. Between 2002 and 2005, the total number of trawl vessels generating $4.0 million or less in revenue has ranged from a low of 81 in 2004 and 2005, to a high of 112 in 2002. Average gross revenue (from all fishing sources in Alaska) generated by these vessels was approximately $840,000 in 2005, which was an increase from $730,000 in 2004 and $590,000 in 2002. Thus, the proposed alternatives may directly regulate between 81 and 112 small entities in the GOA. There has been a general decline in the number of vessels that qualify as a small entity in the GOA, so the most recent (2005) estimate of 81 vessels was used for the analysis. This estimate is almost certainly an overestimate of the number of small entities actually directly regulated by this action since it does not take account of affiliations among the entities. Data necessary to fully assess such linkages are not currently available.

The BSAI management area has a larger number of trawl vessels considered small entities than the GOA. In 2005, 99 catcher vessels and 2 catcher/processor vessels reported gross annual receipts of $4.0 million or less, from all their fishery production off Alaska. Between 2002 and 2005, the total number of vessels categorized as small entities in these BSAI fisheries has ranged from a low of 101 in 2005 to a high of 123 in 2002. Between 2002 and 2003, the average gross revenue (from all Alaskan fishing sources) generated by these vessels has ranged from a low of $1.20 million in 2003 to a high of $1.60 million in 2005. Thus, the proposed alternatives may directly regulate, on average, 113 trawl vessels that are considered small entities. This estimate is almost certainly an overestimate of the number of small entities actually directly regulated by this action, since it does not take account of affiliations among the entities. As is the case for the GOA, data necessary to fully assess such linkages are not currently available.

Two alternatives to the proposed action were examined. Alternative 1 was the "No Action" alternative. Under this alternative the VIP would have remained in place. This alternative would have involved a renewed commitment to investigating violations, and prosecuting violators. As noted earlier, the Council and NMFS have had concerns about the effectiveness of this program and its potential to mislead estimates of PSC incidental catches. Moreover, cooperatives offer new methods to control PSC bycatch rates. Alternative 2 would retain the program, but would reduce the frequency with which PSC rates are published. This alternative would reduce the administrative costs of Alternative 1, but would retain its most serious consequences. Alternative 3, which would repeal the VIP provisions of regulation, was chosen as the proposed

alternative because it was the only alternative that meets the objectives of this action. Alternatives 1 and 2 would renew the VIP. If the VIP were effective, it could lead to reduced bycatch rates and the harvest of larger proportions of TACs in certain trawl fisheries. However, as noted, there are important concerns about the program's potential for successful reduction in bycatch rates. As a practical matter, 100 percent observer coverage is required to make a case against a trawl operator for exceeding the PSC rate. This level of observer coverage is available only on trawl vessels greater than or equal to 125 feet LOA. Enforcement efforts would be principally directed against this class of vessels. Small entities, as defined by the Small Business Administration (SBA), could occur among both vessels greater than or equal to 125 feet LOA, and less than or equal to 125 feet LOA. Alternative 3 would best meet the objective of this action and avoid the potential costs that might be imposed on directly regulated small entities by enforcement activities.

This regulation would not impose new recordkeeping and reporting requirements on the regulated small entities.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 26, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

§ 679.7 [Amended]

2. In § 679.7, remove and reserve paragraph (a)(5).

§ 679.21 [Amended]

3. In § 679.21, remove and reserve paragraph (f).

[FR Doc. E7–23257 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 230
Friday, November 30, 2007

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0094]

National Wildlife Services Advisory Committee; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that we have reestablished the Secretary's National Wildlife Services Advisory Committee for a 2-year period. The Secretary is soliciting nominations for membership on this Committee.

DATES: Consideration will be given to nominations received on or before January 14, 2008.

ADDRESSES: Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road, Unit 87, Riverdale, MD 20737–1234; (301) 734–5149.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (the Committee) advises the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies. The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

We are soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside of its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 21st day of November 2007.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–23195 Filed 11–29–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites and Increase in Fees at 3 Existing Fee Sites—Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Rio Grande National Forest, USDA Forest Service.

ACTION: Notice of New Fee Sites.

SUMMARY: The Rio Grande National Forest is planning to charge a $50/night fee for the new overnight rentals of Stone Cellar Guard Station, Saguache Bunk House, Alder Creek Guard Station and Fitton Cabin; as well as a $75/night fee for Upper Crossing Guard Station, River Springs Guard Station and 2 cabins at Platoro Reservoir. These cabins have not been available for recreation use prior to this date. Rentals of other cabins on the Rio Grande National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. The Rio Grande National Forest is also proposing that the fees for existing rental cabins be raised from $35/night to $50/night for Brewery Creek Guard Station, Carnero Guard Station, and Elwood Guard Station. Funds from the rental cabins will be used for the continued operation and maintenance of the cabins.

DATES: These cabins will become available for recreation rental after June 1, 2008 and contingent upon completion of certain improvements.

ADDRESSES: Forest Supervisor, Rio Grande National Forest, 1803 West Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: John Murphy, Recreation Program Coordinator, 719–852–6221.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

These new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Rio Grande National Forest currently has three cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of these rental cabins have shown that people desire having this sort of recreation experience on the Rio Grande National Forest. A market analysis indicates that the $50/per night fee and $75/night fee are both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent these cabins will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $7 fee for reservations.

Dated: November 19, 2007.

Dan S. Dallas,

Rio Grande National Forest Supervisor.

[FR Doc. E7–23196 Filed 11–29–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent: To Request Comments on a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), this notice announces the intention of NRCS to request a revision for a currently approved information collection, Long-Term Contracting.

DATES: Comments on this notice must be received 60 days after publication in the Federal Register to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed at Leah B. Ricke, Soil Conservationist, USDA, NRCS, Post Office Box 2890, Room 5238-South, Washington, DC 20250; telephone: (202) 720–6168; e-mail: *Leah.Ricke@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Long-Term Contracting.

Office of Management and Budget (OMB) Number: 0578–0013.

Expiration Date of Approval: September 30, 2009.

Type of Request: Revision of a currently approved collection.

Abstract: The primary objective of NRCS is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of long-term contracting information collection is to provide for programs to extend financial and technical assistance through easements and long-term contracts to landowners and others. These programs provide for making land use changes and installing conservation measures and practices to conserve, develop, and use the soil, water, and related natural resources on private lands. For cost-share programs, Federal financial and technical assistance is based on a conservation plan or schedule of operations that is made a part of an agreement, contract, or easement for a period of time of no less than 1 year and no greater than 10 years. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan or schedule of operations. In return for this agreement, Federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment. For easement programs, NRCS purchases from participants a conservation easement and provides for the easement's protection and management for the life of the easement.

This request for revision reflects the Secretary of Agriculture's authority to continue with the conservation programs at authorized funding levels. Selected long-term contracting forms have been revised to facilitate their use in several different programs. Form CCC–1200 has been changed by splitting it into a new Form NRCS–CPA–1200 (Application) and a new Form NRCS–CPA–1202 (Contract). Forms utilized within business software applications have been modified to a consistent "NRCS–CPA–XXXX" identification format.

The information collected through this package is used by NRCS to ensure the proper use of program funds, including applications for participation, easement acquisition, contract implementation, conservation planning, and application for payment. NRCS will ask for a 3-year OMB approval, with revision, within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.75 hours or 45 minutes per response.

Respondents: Individuals, businesses, households, or State, local, or tribal governments.

Estimated Number of Respondents: 37,504.

Estimated Total Annual Burden on Respondents: 25,231.17 hours.

Comments Are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to: Leah B. Ricke, Soil Conservationist, USDA, NRCS, Post Office Box 2890, Room 5238-South, Washington, DC 20250; telephone: (202) 720–6168; e-mail: *Leah.Ricke@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will become a matter of public record.

Signed in Washington, DC on November 19, 2007.

Arlen L. Lancaster,

Chief.

[FR Doc. E7–23189 Filed 11–29–07; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments must be Received on or Before: December 30, 2007.

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

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

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

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

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the

statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location(s): Document Destruction, Internal Revenue Service, 11 South Street, 400 North 8th Street, Richmond, VA.
NPA: Goodwill Services, Inc., Richmond, VA.
Contracting Activity: U.S. Department of the Treasury, Internal Revenue Service, Chamblee, GA.

Deletions

Regulatory Flexibility Act Certification

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

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products

Ballpoint Pen, Stick Type,
NSN: 7520–01–058–9975.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Marker, Tube Type,
NSN: 7520–00–138–7981.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: General Services Administration, Office Supplies & Paper Products. Acquisition Ctr, New York, NY.

Services

Service Type/Location: Food Service Attendant, U.S. Coast Guard, 259 High Street, South Portland, ME.
NPA: Northern New England Employment Services, Portland, ME.
Contracting Activity: U.S. Coast Guard, Department of Transportation, Norfolk, VA.
Service Type/Location: Machining Parts, Naval Supply Center, Charleston, SC.
NPA: UNKNOWN.
Contracting Activity: Department of the Navy, Charleston, SC.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–23236 Filed 11–29–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

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

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 30, 2007.

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

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

SUPPLEMENTARY INFORMATION: On September 28 and October 5, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 55173; 56983) of proposed additions to the Procurement List.

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

Regulatory Flexibility Act Certification

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

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

End of Certification

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

Products

Coveralls, Disposable, Recycled Tyvek,
NSN: 8415–LL–L05–0056—Small/Medium
NSN: 8415–LL–L05–0057—Large/Extra Large
NSN: 8415–LL–L05–0058—XXLarge/XXXLarge
NPA: Northeastern Association of the Blind at Albany, Inc., Albany, NY
Coverage: C–List for the requirements of the Norfolk Naval Shipyard, Portsmouth, VA
Contracting Activity: Norfolk Naval Shipyard, Portsmouth, VA
Hydration System, MOLLE, Universal Camouflage,
NSN: 8465–01–525–5531
NPA: The Lighthouse for the Blind, Inc., Seattle, WA
Coverage: C–List for the requirements of the Defense Supply Center Philadelphia, Philadelphia, PA
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–23237 Filed 11–29–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Clarification of Scope of Procurement List Additions; 2007 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List

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

ACTION: Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of January 1, 2008.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535–69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration, and C-list products are suitable for the requirements of one or more specified agency(ies). The lists below track changes to A-, B-, C-designations that occurred between August 27, 2007 and November 26, 2007. If not currently available, the A-List products listed below will be available for purchase through the GSA Global Supply system and JWOD-authorized commercial distributors on or about January 1, 2008.

DATES: The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is January 1, 2008.

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

FOR FURTHER INFORMATION CONTACT: Emily A. Covey, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or e-mail *cmtefedreg@jwod.gov.*

Products moved from B-list to A-list:

None.

Products moved from C-list to A-list:

None.

Products moved from A-list to B-list:

None.

Products moved from A-list to C-list:

None.

Products moved from B-list to C-list:

None.

Products moved from C-list to B-list:

Emergency administrative Kit (50 person), 7520–00–NIB–1738.

Submarine Wet Bag, 8105–01–532–6920.

The complete A-list is available at *http://www.jwod.gov/jwod/p_and_s/alist2007.htm.*

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–23238 Filed 11–29–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 071108692–7694–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2007 Annual Surveys in the Manufacturing Area. The 2007 Annual Surveys consist of the Current Industrial Reports surveys and the Survey of Industrial Research and Development. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from non-governmental or other governmental sources. As in prior years, these surveys will operate as separate collections of national statistical data on manufacturing. Because 2007 is an economic census year, the 2007 Annual Survey of Manufactures is being conducted as part of the economic census and is not covered in this notice of determination. The following two annual surveys in the manufacturing area will not be conducted in 2007: Survey of Plant Capacity Utilization, and the Survey of Pollution Abatement Costs and Expenditures.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in each survey. Additional copies of the surveys are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Manufacturing and Construction Division, on (301) 763–4598.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct mandatory surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 61, 81, 131, 182, 193, 224, and 225. The data collected in the annual surveys in the manufacturing area will be similar to those collected in the past and within the general scope and nature of those inquiries covered in the economic census year; all the data collected in these surveys are mandatory under the authority of the sections of Title 13, U.S.C., mentioned above. In the interim years, most of these surveys are conducted under a mandatory basis as well.

As in prior years, these surveys will operate as separate collections of national statistical data on manufacturing. Because 2007 is an economic census year, the 2007 Annual Survey of Manufactures is being conducted as part of the economic census and is not covered in this notice of determination. Two annual surveys in the manufacturing area will not be conducted in 2007. First, because the assessment of plant capacity utilization will be made on a quarterly basis for 2007, the Annual Survey of Plant Capacity Utilization will not be conducted this year. Second, the Annual Survey of Pollution Abatement Costs and Expenditures will not be conducted this year because the partnering agency for this survey has determined not to collect these data for 2007.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys:

Survey Title

MA311D Confectionery.
MA314Q Carpets and Rugs.
MA321T Lumber Production and Mill Stocks.
MA325F Paint and Allied Products.
MA325G Pharmaceutical Preparations, except Biologicals.
MA327C Refractories.
MA327E Consumer, Scientific, Technical, and Industrial Glassware.
MA331B Steel Mill Products.
MA332Q Antifriction Bearings.
MA333A Farm Machinery and Lawn and Garden Equipment.
MA333D Construction Machinery.
MA333F Mining Machinery and Mineral Processing Equipment.
MA333M Refrigeration, Air-conditioning, and Warm Air Equipment.
MA333N Fluid Power Products for Motion Control (Including Aerospace).
MA333P Pumps and Compressors.
MA334A Electromedical Equipment and Analytical Instruments.
MA334C Control Instruments.
MA334D Defense, Navigational, and Aerospace Electronics.

MA334M Consumer Electronics.
MA334Q Semiconductors, Electronic Components, and Semiconductor.

Manufacturing Equipment

MA334T Meters and Test Devices.
MA335E Electric Housewares and Fans.
MA335F Major Household Appliances.
MA335J Insulated Wire and Cable.
MA335K Wiring Devices and Supplies.
MA336G Aerospace Industries (Orders, Sales, and Backlog).

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports (listed below) will be identical with that of the monthly and quarterly reports:

Survey Title

M311H Animal and Vegetable Fats and Oils (Stocks).
M311J Oilseeds, Beans, and Nuts (Primary Producers).
M311L Fats and Oils (Renderers).
M311M Animal and Vegetable Fats and Oils (Consumption and Stocks).
M311N Animal and Vegetable Fats and Oils (Production, Consumption, and Stock).
M313P Consumption on the Cotton System.
M313N Cotton and Raw Linters in Public Storage.
M327G Glass Containers.
M336G Civil Aircraft and Aircraft Engines.
MQ311A Flour Milling Products.
MQ313A Textiles.
MQ315A Apparel.
MQ315B Socks.
MQ325A Inorganic Chemicals.
MQ325B Fertilizer Materials.
MQ327D Clay Construction Products.
MQ333W Metalworking Machinery.
MQ334P Telecommunications.
MQ334R Computers and Peripheral Equipment.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF publishes the results in its publication series. All data items are collected on a mandatory basis under the authority of the sections of Title 13,U.S.C., mentioned above.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the 2007 Annual Surveys under the following OMB control numbers: Current Industrial Reports—0607–0392, 0607–0395, and 0607–0476; and Survey of Industrial Research and Development—0607–0912.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: November 26, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–23250 Filed 11–29–07; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 071031632–7634–01]

Service Annual Survey for 2007

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code (U.S.C.), sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. To obtain the desired data, the Census Bureau announces the administration of the 2007 Service Annual Survey (SAS).

ADDRESSES: The Census Bureau will furnish report forms to respondents included in the survey, and additional copies are available upon written request to the Director, Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Ron Farrar, Chief, Health Care and Consumer Services Branch, Service Sector Statistics Division, at (301) 763–6782.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, U.S.C. The SAS provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the Economic Census. For 2007, the economic census year, the SAS will, as it has in the past, operate as a separate sample of selected service industries.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. The SAS now covers all or some of the following nine sectors: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administrative and Support and Waste Management and Remediation Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services. The probability of a firm's selection is based on its revenue size (estimated from payroll); that is, firms with a larger payroll will have a greater probability of being selected than those with smaller ones. We are mailing report forms to the firms covered by this survey and require their submission within 30 days after receipt. These data are not publicly available from non-government or other government sources. Based upon the foregoing, the Census Bureau is conducting the 2007 SAS for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, Title 44 U.S.C., Chapter 35, the OMB approved the SAS under OMB Control Number 0607–0422.

Dated: November 26, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–23247 Filed 11–29–07; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the 2006–2007 Administrative Review

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

EFFECTIVE DATE: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3797.

Background

On April 27, 2007, the Department published a notice of initiation of antidumping duty administrative review of glycine from the People's Republic of China ("China"), covering the period March 1, 2006, through February 28, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007). The preliminary results for this administrative review are currently due on December 1, 2007.[1] *See* section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"). The Department is extending the time limit for the completion of the preliminary results of this review by 120 days because it is not practicable to complete the review within this time period. In this review, the Department has encountered complicated affiliation issues, which require further analysis. Such analysis is necessary in order for the Department to obtain accurate information related to sales practices, factors of production, and corporate relationships. In addition, the Department intends to issue additional supplemental questionnaires prior to issuing the preliminary results.

Given that it is not practicable to complete the review within the statutory time period, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. Since a 120-day extension would result in the deadline for the preliminary results falling on March 30, 2008, which is Sunday, the new deadline for the final results will be the next business day, March 31, 2008. *See Next Business Day Rule*. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: November 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–23284 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] Because December 1, 2007, falls on Saturday, the actual date for the preliminary results will be the next business day, December 3, 2007. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005) ("*Next Business Day Rule*").

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–891

Hand Trucks and Certain Parts Thereof from the People's Republic of China: Full Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., 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) 482–4340.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce("Department") published an antidumping duty order on hand trucks and certain parts thereof ("hand trucks") from the People's Republic of China ("PRC") on December 2, 2004. *See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 70122 (December 2, 2004). On February 2, 2007, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of hand trucks from the PRC for the period December 1, 2005, through November 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On September 7, 2007, the Department published a notice to extend the issuance of the preliminary results of this administrative review by 90 days. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 51411 (September 7, 2007). The preliminary results of this review are currently due no later than December 1, 2007.

Extension of Time Limit of Preliminary Results.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time period to a maximum of 365 days. Although we previously extended the 245-day period by 90 days for completion of the review, we have determined that completion of the preliminary results of this review within the extended 335-day period is not practicable because the Department needs additional time to analyze information pertaining to the respondents' sales practices, factors of production, and corporate relationships, to evaluate certain issues raised by the petitioners, and to issue and review responses to supplemental questionnaires.

Because it is not practicable to complete this review within the extended 335-day time period, we are fully extending the time period for issuing the preliminary results of review by an additional 30 days until December 31, 2007, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results. This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 C.F.R. 351.213(h)(2).

November 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–23288 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

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

SUMMARY: On July 3, 2007, the Department of Commerce ("the Department") published the preliminary results of its new shipper review of the antidumping duty order on honey from the People's Republic of China ("PRC") for the period December 1, 2005, through June 30, 2006. *See Honey from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 36422 (July 3, 2007) ("*Preliminary Results*"). Based on our analysis of the record, including information obtained since the preliminary results, we continue to apply adverse facts available ("AFA") with respect to Shanghai Bloom International Trading Co., Ltd. ("Shanghai Bloom"), which failed to cooperate to the best of its ability, provided unverifiable information, and impeded the proceeding. *See* Adverse Facts Available section, below.

EFFECTIVE DATE: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Michael Quigley, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–4047, respectively.

Background

On July 3, 2007, the Department of Commerce ("Department") published the preliminary results of the new shipper review of the antidumping duty order on honey from the People's Republic of China for the period December 1, 2005, through June 30, 2006. *See Preliminary Results*. On September 25, 2007, the Department extended the final results by thirty days. *See Notice of Extension of the Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 72 FR 54436 (September 25, 2007). On October 31, 2007, the Department fully extended the final results. See Notice of Extension of the Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China, 72 FR 61622 (October 31, 2007). On August 2, 2007, the Department received a case brief on behalf of Shanghai Bloom. On August 8, 2007, the Department received a rebuttal brief on behalf of petitioners, the American Honey Producers Association and the Sioux Honey Association.

Scope of Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

In the case and rebuttal briefs received from the parties after the *Preliminary Results*, we received comments on issues related to the Department's preliminary application of AFA to Shanghai Bloom including the factors of production and completeness. All issues raised in the case briefs are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum on file in the Central Records Unit ("CRU"), room B–099 of the Herbert C. Hoover Building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://www.trade.gov/ia*. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Separate Rates

In our preliminary results, we found that Shanghai Bloom had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*. We have not received any information since the *Preliminary Results* with respect to Shanghai Bloom which would warrant reconsideration of our separate-rates determination with respect to this company. Therefore, for these final results, we determine that Shanghai Bloom has met the criteria for the application of a separate rate.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made no changes to the preliminary results. For the final results, we have adopted our positions in the preliminary results. We continue to find that the application of total adverse facts available is warranted for Shanghai Bloom pursuant to sections 776(a)(2)(A), (C), and (D) and 776(b) of the Tariff Act of 1930, as amended ("the Act"). For a discussion, see the *Issues and Decision Memorandum* at Comments 1.

Final Results of Review

We determine that the following margin exists during the period December 1, 2005, through June 30, 2006:[1]

HONEY FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Linxiang Jindeya Beekeeping Co., Ltd./ Shanghai Bloom International Trading Co., Ltd.	221.02

Assessment of Antidumping Duties

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Shanghai Bloom, the cash-deposit rate will be equal to 221.02 percent; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above

[1] For these final results, the AFA margin we are using is 221.02, which is the highest rate established in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 37715 (July 11, 2007), published subsequent to the preliminary results of this new shipper review.

that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 221.02 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These reviews and notice are in accordance with sections 751(a)(1), 751(a)(2) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: November 23, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–23287 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–915]

Light–walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of light–walled rectangular pipe and tube from the People's Republic of China. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Damian Felton or Shane Subler, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0133 and (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department of Commerce's (the Department) notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Light–Walled Rectangular Pipe and Tube from the People's Republic of China*, 72 FR 40281 (July 24, 2007) (*Initiation Notice*).

On August 7, 2007, the Department selected the two largest Chinese producers/exporters of light–walled rectangular pipe and tube (LWRP), Qingdao Xiangxing Steel Pipe Co., Ltd. (Qingdao) and Zhangjiagang Zhongyuan Pipe–Making Co., Ltd. (ZZPC), as mandatory respondents. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Respondent Selection" (August 4, 2007). This memorandum is on file in the Department's Central Records Unit in Room B–099 of the main Department building (CRU). On August 7, 2007, we issued the countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC), Qingdao and ZZPC.

On August 22, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of LWRP from the People's Republic of China (PRC). *See Light–Walled Rectangular Pipe and Tube from China, Korea, Mexico and Turkey*, Investigation Nos. 701–TA–449 and 731–TA–1118–1121, 72 FR 49310 (Preliminary) (August 28, 2007).

On August 24, 2007, we published a postponement of the preliminary determination of this investigation until November 26, 2007. *See Light–Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 72 FR 48618 (August 24, 2007).

Petitioners[1] filed a new subsidy allegation on August 29, 2007. The GOC submitted comments responding to petitioners' new subsidy allegation on September 10, 2007. On September 20, 2007, the Department determined to investigate aspects of the newly alleged subsidy relating to currency retention. *See* Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, "New Subsidy Allegation" (September 20, 2007). Questions regarding this newly alleged subsidy were sent to the GOC and the respondent companies on September 20, 2007.

We received responses to our CVD questionnaires from ZZPC, the GOC, and a voluntary respondent, Kunshan Lets Win Steel Machinery Co., Ltd. ("Lets Win") on September 27, 2007, September 28, 2007, October 1, 2007, October 2, 2007, and October 3, 2007. Qingdao, however, did not respond to the Department's CVD questionnaire. The petitioners filed comments on the responses from ZZPC and Lets Win on October 9, 2007, and comments on the GOC's responses on October 17, 2007.

On October 15, 2007, the Department accepted Lets Win as a voluntary respondent to the proceeding pursuant to 19 CFR 351.204(d). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Voluntary Respondent Selection" (October 15, 2007). Then, on October 24, 2007, the Department issued a letter giving Qingdao a final opportunity to respond to the CVD questionnaire issued on August 7, 2007. We never received a CVD questionnaire response from Qingdao. We address the use of facts otherwise available for Qindago below.

We issued supplemental questionnaires as follows: the GOC on October 16, 2007, October 24, 2007, and November 19, 2007; Lets Win on October 17, 2007; and ZZPC on October 17 and October 18, 2007. We received responses to these supplemental questionnaires as follows: the GOC on October 23, 2007, November 7, 2007 and November 21, 2007; ZZPC on November 5, 2007, and November 14, 2007; and Lets Win on October 31, 2007. We received a corrected response from ZZPC on November 23, 2007, but are not considering this submission for the purposes of this preliminary determination. This submission came three days before the preliminary

[1] Allied Tube & Conduit; Atlas Tube; Bull Moose Tube Company; California Steel and Tube; EXLTUBE; Hannibal Industries; Levitt Tube Company LLC, Maruichi American Corporation; Searing Industries; Southland Tube; Vest Inc.; Welded Tube; and Western Tube and Conduit (collectively, petitioners).

determination and, thus, the Department was unable to complete the necessary analyses of ZZPC's submission. This data will be considered for the final determination.

The GOC and petitioners filed comments in advance of the preliminary determination on November 13 and 14, 2007, respectively. Finally, Lets Win submitted an updated questionnaire response on November 16, 2007, which was filed after the deadline originally set by the Department.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our initiation notice for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323, (May 19, 1997) and *Initiation Notice*, 72 FR at 40281. We did not receive any comments.

Scope of the Investigation

The merchandise that is the subject of this investigation is certain welded carbon–quality light–walled steel pipe and tube, of rectangular (including square) cross section (LWR), having a wall thickness of less than 4mm.

The term carbon–quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon–quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon–quality is intended to identify carbon–quality products within the scope. The welded carbon–quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Use of Facts Otherwise Available

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall apply "facts otherwise available" if, *inter alia*, 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 of the Act; (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, provide 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.

In this case, Qingdao did not provide information we requested that is necessary to determine a countervailing duty rate for this preliminary determination. Specifically, Qingdao did not respond to the Department's requests on August 7, 2007, and October 24, 2007, to respond to the CVD questionnaire. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based Qingdao's countervailing duty rate on facts otherwise available.

We have also identified one program for which the GOC did not provide the requested information. Specifically, in our questionnaire, we asked the GOC to provide information about the hot–rolled steel industry in the PRC (including a description of the industry, users of hot–rolled steel in the PRC, and whether hot–rolled steel producers are state–owned enterprises (SOEs)). The GOC limited its response to the "hot–rolled steel narrow strip" industry, claiming that LWRP is produced chiefly from this form of hot–rolled steel. In our supplemental questionnaire, we asked the GOC to provide the requested information for the hot–rolled steel industry as a whole. While some limited information was provided in the GOC's supplemental questionnaire response (November 7, 2007), the GOC did not provide a breakdown of the production accounted for by SOEs or that accounted for by private producers. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are relying on facts otherwise available to determine the countervailable subsidy conferred by the government's provision of hot–rolled steel for less than adequate remuneration.

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 adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

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 Session (1994) at 870. 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.

In selecting from among the facts available for Qingdao, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's CVD questionnaire, Qingdao did not cooperate to the best of its ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that Qingdao will not obtain a more favorable result than had it fully complied with our request in this investigation.

Similarly, we are applying an adverse inference in selecting among the facts available for valuing the benefit conferred by the GOC's provision of hot–rolled steel for less than adequate remuneration. In its response, the GOC stated, "it is difficult to provide a definitive assessment" of the share of hot–rolled production accounted for by SOEs and private suppliers because there are so many producers in China. *See* GOC supplemental questionnaire response (November 7, 2007) at 9. The failure to provide this information within the established deadlines has impeded our investigation. Moreover, the GOC has not provided us with any plausible explanation as to why it cannot provide us with the information within the established deadlines. Thus, we preliminarily conclude that the GOC has failed to act to the best of its ability.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and accompanying Issues and Decision Memorandum at "Analysis of Programs."

The Department's practice when selecting an adverse margin from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*; 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

Because Qingdao failed to act to the best of its ability, as discussed above, for each program examined, we made the adverse inference that Qingdao benefitted from the program unless the record evidence made it clear that Qingdao could not have received benefits from the program because, for example, we have preliminarily found the program not countervailable. *See, e.g., Certain Cold–Rolled Carbon Steel Flat Products From Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum at "Methodology and Background Information." To calculate the program rates, we have generally relied upon the highest program rate calculated for any responding company in this investigation as adverse facts available. *See Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006) and accompanying Issues and Decision Memorandum at "Analysis of Programs."

Thus, for programs based on the provision of goods at less than adequate remuneration, we have used the ZZPC rate for the provision of hot–rolled steel for less than adequate remuneration. For value added tax (VAT) and grant programs, we are unable to utilize company–specific rates from this proceeding because neither Lets Win nor ZZPC received any countervailable subsidies from these subsidy programs. Therefore, for VAT and grant programs we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZPC's rate for the provision of hot–rolled steel for less than adequate remuneration.

Finally, for the seven alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we have applied an adverse inference that Qingdao paid no income tax during the period of investigation (*i.e.*, calendar year 2006). The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these seven income tax rate programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (*i.e.*, the seven programs combined provided a 33 percent benefit). This 33 percent AFA rate does not apply to income tax deduction or credit programs. For income tax deduction or credit programs we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZPC's rate for the provision of hot–rolled steel at less than adequate remuneration. *See* Memorandum to the File, entitled Selection of the Adverse Facts Available Rate for Qingdao Xiangxing Steel Pipe Co., Ltd." (November 26, 2007) (this memorandum is on file in the Department's CRU).

We do not need to corroborate the calculated subsidy rates we are using as AFA because they are not considered secondary information as they are based on information obtained in the course of this investigation. *See* section 776(c) of the Act; *see also* the SAA at 870.

Regarding the GOC's failure to provide requested information regarding the hot–rolled steel industry in the PRC, the Department is preliminarily rejecting prices in the PRC as possible benchmarks for determining whether hot–rolled steel is being provided for less than adequate remuneration. Instead, as described in the *Programs Preliminarily Determined to be Countervailable/Provision of Inputs for Less than Adequate Remuneration/Hot–rolled Steel* section below, we are using a world market price as the benchmark to value this subsidy.

Because this information is taken from the petition, it is secondary information and must be corroborated to the extent practicable. We have compared the world–market prices being used to the prices of hot–rolled steel imports into the PRC during the POI, and find that the world–market prices are reliable and relevant. *See* Memorandum from Damian Felton to Susan Kuhbach Re: Preliminary Affirmative Countervailing Duty Determination: Light–walled Rectangular Pipe and Tube from the

People's Republic of China; Preliminary Results Calculation Memorandum for Zhangjiagang Zhongyuan Pipe–Making Co., Ltd.; Jiangsu Qiyuan Group Co., Ltd.; Jiangsu Zhongjia Steel Co., Ltd.; Zhangjiagang Zhongxin Steel Product Co., Ltd.; and Zhangjiagang Baoshuiqu Jiaqi International Business Co., Ltd. (November 26, 2007) (*ZZPC Calculation Memorandum*).

Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

On July 24, 2007, the Department initiated the countervailing duty and antidumping duty investigations of LWRP from the PRC. *See Initiation Notice* and *Initiation of Antidumping Duty Investigations: Light–Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China*, 72 FR 40274 (July 24, 2007). The countervailing duty investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On November 16, 2007, petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of LWRP from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination with the final determination in the companion antidumping duty investigation of LWRP from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued on April 7, 2008. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Light–Walled Rectangular Pipe and Tube from the People's Republic of China*, 72 FR 65564 (November 21, 2007).

Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*). In that determination, the Department found, ". . . given the substantial differences between the Soviet–style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet–style economies does not act as a bar to proceeding with a CVD investigation involving products from China." *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 6; *see also* Memorandum to David M. Spooner, "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-day Economy," (March 29, 2007) at 2 (Georgetown Steel Memo).

More recently, the Department preliminarily determined that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law. *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 63875 (November 13, 2007) (*CWP from the PRC*). In *CWP from the PRC*, we preliminarily determined that date to be December 11, 2001, the date on which the PRC became a member of the WTO. Therefore, for the reasons outlined in *CWP from the PRC*, we have limited our analysis to subsidies bestowed after December 11, 2001, for this preliminary determination.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2006.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding as described in 19 CFR 351.524(d)(2) is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture primary steel mill products. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross–ownership exists between the companies, and (2) the cross–owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross–owned company. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d. 593, 604 (CIT 2001).

According to 19 CFR 351.525(b)(6)(vi), cross–ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

Lets Win: Lets Win responded on behalf of itself, a Taiwanese–owned "productive" foreign invested enterprise. Lets Win also named two affiliates involved in the company's export activities. These companies are located outside of the PRC and are not included in our analysis.

ZZPC: In its response, ZZPC identified numerous affiliated companies and responded on behalf of itself, a producer of the subject merchandise, and four of its affiliates: ZZPC's parent company, Jiangsu Qiyuan Group Co., Ltd. (Group); and three input suppliers to ZZPC, Jiangsu Zhongjia Steel Co., Ltd. (JZS), Zhangjiagang Zhongxin Steel Product Co., Ltd. (ZZSP), and Zhangjiagang Baoshuiqu Jiaqi International Business Co., Ltd. (Jiaqi). The remaining affiliates do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v). Therefore, they are not addressed further here.

The details of the affiliations between ZZPC, Group, JZS, ZZSP, and Jiaqi are proprietary and, hence, addressed separately. *See ZZPC Calculation Memorandum*. Based on the reported information, we preliminarily determine that ZZPC, Group, JZS, ZZSP, and Jiaqi are cross–owned companies within the meaning of 19 CFR 35.525(b)(6)(vi).

Because they are cross–owned and because Group is the parent company of

ZZPC, we preliminarily determine that any subsidies bestowed on Group are properly attributed to Group's consolidated sales under 19 CFR 351.525(b)(6)(iii). With respect to Jiaqi, this company is a trading company and does not produce any merchandise. Instead, it purchased and provided inputs to ZZPC during the POI. Because it is not an input producer, we are not treating Jiaqi as an input supplier as described in 19 CFR 351.525(b)(6)(iv) (which refers to subsidies received by the input producer). Instead, for the preliminary determination, we are treating any subsidies conferred by the government's provision of hot–rolled steel for less than adequate remuneration as having been transferred to ZZPC through Jiaqi's resale of the hot–rolled steel to ZZPC, consistent with 19 CFR 351.525(b)(6)(v).

ZZPC's other input suppliers, JZS and ZZSP, provide ZZPC with steel strip. These companies are not trading companies: both produce cold–rolled steel. The types of inputs they provide to ZZPC are proprietary and are addressed separately. *See ZZPC Calculation Memorandum.*

In its November 13, 2007, submission, the GOC argues, *inter alia*, that any hot–rolled or cold–rolled products sold by JZS and ZZSP cannot be considered "primarily dedicated" to the production of LWRP or any particular downstream products, as that term is used in 19 CFR 351.525(b)(6)(iv). We agree that there is no evidence on the record to support a finding that these cold–rolled products are primarily dedicated to ZZPC's production of the downstream product and, therefore, for purposes of this preliminary determination we are not attributing any subsidies received by these cross–owned cold–rolled steel producers to LWRP produced by ZZPC.

However, for any hot–rolled steel products which ZZPC purchased from JZS or ZZSP, we preliminarily determine that these companies are not input suppliers as described in 19 CFR 351.525(b)(6)(iv). Instead, as with the trading company, Jiaqi, we are treating any subsidies conferred by the government's provision of hot–rolled steel for less than adequate remuneration as having been transferred to ZZPC through JZS' and ZZSP's sale of hot–rolled steel products to ZZPC, consistent with 19 CFR 351.525(b)(6)(v).

Creditworthiness

Petitioners alleged that Baosteel received countervailable loans and that it was uncreditworthy (*see Initiation Notice*, 72 FR at 36671). Because we did not select Baosteel as a mandatory respondent in this investigation, we are making no finding regarding that company's creditworthiness.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Income Tax Subsidies for Foreign Invested Enterprises (FIEs)

Reduced Income Tax Rates for FIEs Based on Location

FIEs are encouraged to locate in designated coastal economic zones, special economic zones, and economic and technical development zones in the PRC through preferential tax rates. This program was originally created in 1988 under the *Provisional Regulations of the Ministry of Finance of the People's Republic of China Concerning the Reduction and Exemption from Enterprise Income Tax and Consolidated Industrial and Commercial Tax for the Encouragement of Foreign Investment in Coastal Open Economic Zones* and is currently administered under the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* (*FIE Tax Law*). Under Article 7 of the FIE Tax Law, "productive" FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone. According to the GOC, the *FIE Tax Law* has been repealed effective January 1, 2008, and there are no provisions regarding this program in the new *Income Tax Law of the People's Republic of China for Enterprises.*

Lets Win is located in a coastal economic development zone and paid income tax at the reduced rate of 24 percent during the POI.

We preliminarily determine that the reduced income tax rate paid by "productive" FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Lets Win as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the rate Lets Win would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we preliminarily determine that Lets Win received a countervailable subsidy of 0.27 percent *ad valorem* under this program.

B. Provision of Inputs for Less than Adequate Remuneration

Hot–rolled Steel

Hot–rolled steel suppliers in the PRC have varying ownership structures including state ownership, joint stock companies with state and foreign ownership, collective ownership, and wholly private ownership. According to the GOC, prices for hot–rolled steel are not set by regulation. Instead, Chinese producers set prices taking into account their production costs and supply and demand considerations. The GOC further claims that prices are differentiated in the hot–rolled steel market, with both state–owned and private producers pricing at different levels for the same product and that, at any given point in time, pricing leaders can be private or state–owned producers.

During the POI, the ZZPC companies purchased from state–owned suppliers, collectives, and privately–owned companies. Lets Win provided information that it purchased hot–rolled steel only from privately–owned suppliers.

We preliminarily determine that the GOC provided hot–rolled steel to certain of the ZZPC companies during the POI for less than adequate remuneration through the GOC–owned steel companies. In its response, the GOC listed the industries that use hot–rolled steel: construction, machinery and equipment (including industrial boilers, internal combustion engines, machine tools, electrical tools, smelter equipment, chemical equipment, feedstock processing machinery, packaging machinery, tractors, pollution prevention and remediation equipment, electricity generators and electrical motors, among others), automotive, pipe and tube, shipbuilding, railway industries (including profiled bar for rail construction and locomotive engines), petrochemical (including oil country tubular goods), household appliances, and freight containers. *See* GOC supplemental questionnaire response (November 7, 2007) at 10. We preliminarily find that these industries

are "limited in number" and, hence, that the provision of hot–rolled steel is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. See also *Notice of Final Affirmative Countervailing Duty: Certain Cold–Rolled Carbon Flat Steel Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 1 and Comment 2, where the Department found that Posco's provision of hot–rolled coil was countervailable.

We further determine preliminarily that the GOC's provision of hot–rolled steel through its state–owned producers is a government financial contribution within the meaning of section 771(5)(D)(iii) of the Act and that it confers a benefit on ZZPC because the good is being sold for less than adequate remuneration as described in section 771(5)(E)(iv) of the Act. In determining what constitutes adequate remuneration, the Department is not relying on prices in the PRC, as explained in the *Selection of the Adverse Facts Available Rate* section, above. Instead, in accordance with 19 CFR 351.511(a)(2), we have used a world market price as a benchmark to compare to the respondent's reported purchase prices from state–owned steel suppliers. Specifically, we used the "World Export Price" from *Steel Benchmarker*, as provided in Exhibit 173, Attachment 2, Volume IV, of the Petition (July 6, 2007).

We have rejected internal prices in the PRC because we do not know the share of steel produced and sold by SOEs in the PRC. As explained in the preambular language addressing 19 CFR 351.511(a), "While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market." *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (CVD Preamble). Because we are not able to gauge the extent of government involvement in the PRC hot–rolled steel market, we have made the adverse inference that the market is dominated by SOEs and that this distorts the prices for this product in the PRC.

To calculate the benefit, we compared the monthly weighted–average prices paid by the ZZPC companies for hot–rolled steel purchased from SOEs to the average monthly prices reported in *Steel Benchmarker*. *Steel Benchmarker* does not include prices for January - March 2006; therefore, we have used the April 2006 price as a surrogate. We treated the difference in the amounts that ZZPC would have paid using the *Steel Benchmarker* prices to the amounts actually paid as the benefit, and divided the benefit by ZZPC's total sales. On this basis, we preliminarily determine that ZZPC received a countervailable benefit of 2.99 percent *ad valorem*.

In its November 14, 2007 submission, ZZPC reported that the hot–rolled steel strip purchased by JZS from the SOE, Shangahi Baosteel Steel Products Trade Co., Ltd., Wuxi Branch is used to produce electronic pipe, which ZZPC claims is non–subject merchandise. ZZPC provided no evidence to support these claims. Therefore, for the preliminary determination, we are treating this steel as having been used as an input for LWRP.

Water

According to the GOC, water suppliers in the PRC are highly localized. Many suppliers are SOEs, particularly in cities, but there is also private ownership. Water prices generally are regulated by the local governments. *See, e.g.*, the *Regulation on Administration of City Water Supply* (Decree 158 of the State Council, 1994), GOC response (September 28, 2007) at Exhibit 118.

The GOC has provided the water rate schedules in effect during the POI for Zhangjiagang, where ZZPC is located. Rate changes were effected during the POI and both sets of rates were submitted.

The GOC states that all users within a given rate category pay the same fixed rate per ton. However, based on our comparison, the rates actually paid by ZZPC are lower than the published rates for industrial users. In our supplemental questionnaire to ZZPC, we asked about this discrepancy and, while ZZPC claims it did not receive a discount, it did not adequately explain why its rates diverged from the published rates.

Based on this, we preliminarily determine that the GOC's provision of water to ZZPC during the POI confers a countervailable subsidy. The provision of water to this company is *de facto* specific because ZZPC pays a different price from the price paid by all industrial users in this jurisdiction. *See* section 771(5A)(D)(iii)(I) of the Act.

We further determine preliminarily that the GOC's provision of water is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and that it confers a benefit on ZZPC because the good is being sold for less than adequate remuneration as described in section 771(5)(E)(iv) of the Act. In determining what constitutes adequate remuneration, the Department is relying on the schedules of prices paid by other industrial users in Zhangjiagang City during the POI. We are using this benchmark because no market–determined prices for water have been provided for this jurisdiction and we have no information indicating that there is a world–market price for water. *See* 19 CFR 351.511(a)(i) and (ii). Consequently, we are selecting a benchmark under 19 CFR 351.511(a)(iii). As stated in the preambular language discussing that section of our regulations, where the government is the sole provider of a good or service, including in the case of water, the Department may assess whether the government price was set in accordance with market principles, which may include an analysis of whether there is price discrimination among the users of the good or service that is provided and that "{w}e would only rely on a price discrimination analysis if the government good or service is provided to more than a specific enterprise or industry, or group thereof." *See* CVD Preamble at 63 FR 65378. In the case of Zhangjiagang City, the GOC has reported that there are over 1,000 industrial users paying the published schedule rates for water. Therefore, we preliminarily determine that the published rate for industrial users of water in Zhangjiagang City is an appropriate benchmark for determining whether the GOC provided water to ZZPC for less than adequate remuneration.

To calculate the benefit, we compared the monthly weighted–average prices paid by ZZPC for water with the published rates for industrial users of water in Zhangjiagang City. We treated the difference in the amounts that ZZPC would have paid using the published rates to the amounts actually paid as the benefit, and divided the benefit by ZZPC's total sales. On this basis, we preliminarily determine that ZZPC received a countervailable benefit of less than 0.005 percent *ad valorem*.

Where the countervailable subsidy rate for a program is less than .005 percent, the program is not included in the total countervailing duty rate. *See, e.g., Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 39998 (July 12, 2005), and the accompanying Issues and Decision Memorandum, at "Purchases at Prices that Constitute 'More than Adequate Remuneration'" (citing *Final Results of Administrative Review: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20,

2004), and the accompanying Issues and Decision Memorandum, "Other Programs Determined to Confer Subsidies").

Regarding Lets Win, the GOC provided the rate schedule that came into effect on September 10, 2006, for the water authority in Kunshan. Subsequent to that date, the rates actually paid by Lets Win were less than, equal to, or in excess of the newly established rates for industrial water users, suggesting that it took some time for the new rates to be reflected in the bills and payments. We intend to request an explanation from Lets Win and to request the rate schedule for the period prior to September 10, 2006, and will address whether the GOC provided water to Lets Win for less than adequate remuneration in our final determination.

II. Programs Preliminarily Determined to Be Not Countervailable

A. Government Policy Lending Program

In *CFS from the PRC*, the Department found Government Policy Lending to provide a countervailable subsidy because record evidence indicated that: (i) the GOC had a policy in place to encourage and support the growth and development of the forestry and paper industry through preferential financing initiatives as illustrated in the GOC's five-year plans and industrial policies; and (ii) the GOC's policy toward the paper industry was carried out by the central and local governments through the provision of loans extended by GOC Policy Banks and state–owned commercial banks. *See CFS from the PRC* and accompanying Issues and Decision Memorandum at Comment 8.

In this investigation, the evidence submitted to date does not support a finding that the LWRP industry in the PRC received preferential financing pursuant to the GOC's Iron and Steel Policy. Therefore, we preliminarily determine that producers and exporters of LWRP in the PRC did not receive government policy loans. We will, however, continue to investigate whether the GOC's Iron and Steel Policy or other plans apply to the LWRP industry, and, if so, the purpose of those policies and whether preferential lending was provided to the LWRP industry pursuant to those policies.

B. Provision of Inputs for Less than Adequate Remuneration

Electricity: According to the GOC, electricity in the PRC is produced by numerous power plants and it is transmitted for local distribution by two state–owned transmission companies, State Grid and China South Power Grid. Generally, prices for uploading electricity to the grid and transmitting it are regulated by the GOC, as are the final sales prices. *See, e.g., Circular on Implementation Measures Regarding Reform of Electricity Prices, (FAGAIJIAGE* {2005} No. 514, National Development and Reform Commission) at Appendix 3, *Provisional Measures on Prices for Sales of Electricity* at Article 29 ("Government departments in charge of pricing at various levels shall be responsible for the administration and supervision of electricity sales prices."), GOC response (September 28, 2007) at Exhibit 114.

Electricity consumers are divided into broad categories such as residential, commercial, large–scale industry and agriculture. The rates charged vary across customer categories and within customer categories based on the amount of electricity consumed. Moreover, among industrial users, certain industries are specifically broken out and these industries receive special, discounted rates. Based on our review of the rate schedules submitted for Jiangsu Province (where both Lets Win and ZZPC are located), discounted rates are established for producers of calcium carbide, electrolyte caustic soda, synthetic ammonia, yellow phosphorus with electric furnace, chlorine alkali, electrolyzed aluminum, and fertilizer. Thus, there is not a discounted rate for LWRP producers and, according to the GOC, the types of industries in Jiangsu province that fall into the large–scale industry category (which includes the LWRP producers) cover virtually all economic sectors outside of agriculture and services.

Based on the record evidence, we preliminarily determine that the provision of electricity to large–scale enterprises in the PRC is neither *de jure* nor *de facto* specific. Although producers in a few particular industries are eligible for discounts under the law, all other large–scale enterprises within a locality pay the same rate for their electricity. Moreover, the absence of price discrimination among most users may also support a preliminary finding that electricity is not being provided to LWRP producers for less than adequate remuneration. *See Programs Preliminarily Determined to Be Countervailable/Provision of Goods for Less Than Adequate Remuneration/ Water*, above.

On this basis, we preliminarily determine that the GOC's provision of electricity does not confer a countervailable subsidy.

C. VAT Rebates (originally referred to as "Export Incentive Payments Characterized as VAT Rebates")

According to the GOC, the "exemption, deduction and refund" of VAT applies if a manufacturer exports its self–produced goods by itself or via a trading company. *See* Article 1 of the *Circular on Further Promotion of Methodology of "Exemption, Deduction, and Refund" of Tax for Exported Goods* (CAISHUI (2002) No. 7), GOC response (September 28, 2007) at Exhibit 98. Under the "VAT refund system," when a producer/exporter purchases inputs (*e.g.*, raw materials, components, fuel and power) it pays a VAT based on the purchase price of inputs. The GOC reported the VAT rates paid by LWRP producers/exports for inputs are as follows: raw materials and electricity - 17 percent; and, fuel and water - 13 percent. Once the exporter/producer exports subject merchandise, a VAT payment and tax exemption form is prepared and filed with the relevant state tax authority. LWRP exporters received a VAT refund of 13 percent of the export price during the POI.

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." 19 CFR 351.517(a); *see also* 19 CFR 351.102 (for a definition of "indirect tax"). Information in the companies' responses shows that Lets Win and ZZPC paid the VAT on their inputs, and applied for and received a VAT refund on their export sales.

To determine whether a benefit was provided under this program, the Department analyzed whether the amount of VAT exempted during the POI exceeded the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Because the VAT rate levied on LWRP in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of LWRP (13 percent), the Department preliminarily determines that, for the purposes of this investigation, the VAT refund received upon the export of LWRP does not confer a countervailable benefit.

The GOC has additionally reported that effective July 1, 2007, the VAT refund rate for exports of LWRP was set at zero percent.

III. Post–POI Programs

E. Government Restraints on Exports

Hot–rolled Steel and Zinc: Petitioners alleged that the GOC restrains exports of hot–rolled steel and zinc by means of export taxes, which artificially suppress the price a producer in the PRC can charge for these inputs into LWRP.

In its response, the GOC provided the *Announcement on Adjustment of Provisional Import or Export Duty for Certain Merchandises* (PRC Customs Announcement No. 22, 2007) *See* GOC questionnaire response (September 28, 2007) at Exhibit 122. This document shows that on May 30, 2007, the GOC announced a provisional export duty rate for hot–rolled steel of five percent and an increase in the provisional export duty rate for zinc from five percent to ten percent. These changes were implemented retroactively to begin on July 1, 2006.

The POI for this investigation is January 1, 2006, through December 31, 2006, and the export restraints allegedly giving rise to a subsidy were announced on May 30, 2007, *i.e.*, after the POI. Although the export duties were implemented retroactively, there is no basis to conclude that the export duties affected the prices paid by the respondents for hot–rolled steel and zinc prior to May 30, 2007, because those purchases had already been made. Therefore, any subsidy conferred by the export duties on hot–rolled steel and zinc would properly be addressed under our Program–wide Change regulation, 19 CFR 351.526(a). That regulation states that the Department may take a program–wide change into account in establishing the estimated countervailing duty cash deposit rate if: (1) the Department determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation, a program–wide change has occurred; and (2) the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question.

In this investigation, Lets Win submitted its monthly purchase prices for hot–rolled steel and zinc for periods prior to and following the May 30, 2007 announcement. ZZPC did not purchase zinc, but ZZPC submitted its purchase prices for hot–rolled steel. The data show fluctuations in the prices of these inputs both before and after the announcement of the export duties. Moreover, the data available for the months after the announcement are limited. For these reasons, we cannot measure the subsidy, if any, arising from the imposition of the export duties, and we are not including these alleged subsidy programs in our cash–deposit rates.

IV. Programs Determined To Be Terminated

A. Exemption from Payment of Staff and Worker Benefits for Export–oriented Industries

The Department has determined that this program was terminated on January 1, 2002, with no residual benefits. *See CFS from the PRC* and accompanying Issues and Decision Memorandum at "Programs Determined to be Terminated."

V. Programs Preliminarily Determined To Be Not Used By Lets Win and ZZPC

We preliminarily determine that Lets Win and ZZPC did not apply for or receive benefits during the POI under the programs listed below.

A. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
B. The "Two Free, Three Half" Program
C. Local Income Tax Exemption and Reduction Program for "Productive" FIEs
D. Income Tax Exemption Program for Export–oriented FIEs
E. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export–oriented Enterprises
F. Reduced Income Tax Rate for Technology and Knowledge Intensive FIEs
G. Reduced Income Tax Rate for High or New Technology FIEs
H. Preferential Tax Policies for Research and Development at FIEs
I. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
J. Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs
K. Program to Rebate Antidumping Legal Fees in Shenzen and Zhejiang Provinces
L. Funds for "Outward Expansion" of Industries in Guangdong Province
M. Export Interest Subsidy Funds for Enterprises Located in Shenzhen and Zhejiang Provinces
N. Loans Pursuant to Liaoning Province's Five-year Framework
O. VAT and Tariff Exemptions on Imported Equipment
P. VAT Rebates on Domestically Produced Equipment
Q. The State Key Technologies Renovation Project Fund
R. Grants to Loss–making State–owned Enterprises
S. Provision of Inputs for Less Than Adequate Remuneration: Natural Gas
T. Foreign Currency Retention Program

For purposes of this preliminary determination, we have relied on the GOC's and responding companies' responses to preliminarily determine non–use of the programs listed above. During the course of verification, the Department will further investigate whether these programs were used by respondent companies during the POI.

VI. Programs for Which More Information is Required

A. Provision of Land for Less than Adequate Remuneration

Citing Article 29 of the *Implementation Rules of the Law on Administration of Land*, land–use rights can be obtained from the government in one of three ways: 1) purchase; 2) lease; and 3) as an equity investment. *See* GOC response (September 28, 2007) at Exhibit 121. The GOC further states that the price of land–use rights may be determined by means of public bidding, auction, independent appraisal, and negotiation. According to the GOC, no formal appraisal was conducted in connection with the sale of land use rights to Lets Win or ZZPC. Instead, the purchase prices for these companies' land use rights "were determined through arm's length negotiations, taking into consideration the prices of land in the neighboring area, local economic development level, and the specific conditions of the land under consideration." *See* GOC Supplemental Questionnaire Response (November 7, 2007) at 17.

Lets Win reported that it purchased its land use rights from its local county government in March 2001. ZZPC reported that it owns land use rights for three lots. For two lots, the land use rights were purchased prior to December 11, 2001. Because these purchases occurred prior to December 11, 2001, we preliminarily determine that the GOC's provision of these land use rights does not confer a countervailable subsidy. *See Application of the Countervailing Duty Law to Imports from the PRC* section, above.

ZZPC purchased its third lot from the Zhangjiagang Jingang Town Assets Management Company after December 11, 2001. According to ZZPC and the GOC, no appraisals or valuations of the land use rights were conducted to support this purchase.

It is difficult for the Department to reconcile the GOC's claim that the local land authority took into consideration "the prices of land in the neighboring area, local economic development level, and the specific conditions of the land"

with the fact that no appraisal or valuation was conducted. Neither the GOC nor ZZPC has provided any explanation of the process used by the Zhangjiagang Jingang Town Assets Management Company or ZZPC to establish the value of the land use rights, a description of the negotiation process, or the prices for land use rights for comparable plots. Without this information, we are not able to determine whether the provision of land to ZZPC should be considered specific within the meaning of section 771(5A) of the Act and, if so, how to determine what would constitute adequate remuneration for the land use rights.

We intend to seek further information on these questions and to issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination. In the meantime, we invite parties to submit information and argument on the basis for making a specificity determination with respect to the provision of land and how adequate remuneration should be determined. These submissions should be made no later than December 21, 2007.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each exporter/manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
Kunshan Lets Win Steel Machinery Co., Ltd.	0.27 percent
Qingdao Xiangxing Steel Pipe Co.	77.85 percent
Zhangjiagang Zhongyuan Pipe–making Co., Ltd., Jiangsu Qiyuan Group Co, Ltd.	2.99 percent
All–Others	2.99 percent

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all–others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all–others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, because we have only one rate that can be used to calculate the all–others rate, ZZPC's rate, we have assigned that rate to all–others.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of LWRP from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above. Neither the suspension of liquidation nor the requirement for a cash deposit or bond will apply to merchandise produced and exported by Lets Win because the Department has preliminarily determined that Lets Win received *de minimis* subsidies.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement.

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 26, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23283 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 07–00006]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Application for an Export Trade Certificate of Review from Glokle, Inc.

SUMMARY: Export Trading Company Affairs ("ETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review ("Certificate"). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export

Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 07–00006." A summary of the application follows.

Summary of the Application

Applicant: Glokle, Inc. ("GINC"), P.O. Box 52081, Tulsa, Oklahoma 74152.

Contact: Alan M. Greenfield, President & CEO, Telephone: (918) 629–7432.

Application No.: 07–00006.

Date Deemed Submitted: November 21, 2007.

Members (in addition to applicant): None.

GINC seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade:

1. *Products.*

All Products.

2. *Services.*

All Services.

3. *Technology Rights.*

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights).*

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: Government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, GINC may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive arrangements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. GINC and its individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules so that GINC may determine the availability of Products for export and effectively coordinate with its distributors in Export Markets.

Dated: November 27, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–23286 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE02

Endangered and Threatened Species; Initiation of a Status Review for Shortnose Sturgeon

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

ACTION: Notice; request for information.

SUMMARY: We, NMFS, announce the initiation of a status review for shortnose sturgeon (*Acipenser brevirostrum*), and we solicit information on the status of, and factors and threats affecting, the species. The status review is intended to compile and analyze the best available information on the status of and threats to the species and also consider if shortnose sturgeon should be identified and assessed as Distinct Population Segments.

DATES: Written information regarding the status of, and factors and threats affecting, shortnose sturgeon must be received by January 29, 2008.

ADDRESSES: You may submit comments, identified by "RIN 0648-XE02," by any one of the following methods:

• Electronic submissions: Submit all electronic public comments via the

Federal eRulemaking Portal: *http://www.regulations.gov*.

• Fax: 978–281–9394, Attention: Dana Hartley.

• Mail: Information on paper, disk or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

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

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

FOR FURTHER INFORMATION CONTACT: Dana Hartley, NMFS, Northeast Regional Office (978) 281–9300 ext. 6514; Stephania Bolden, NMFS, Southeast Regional Office (727) 824–5312; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1410.

SUPPLEMENTARY INFORMATION:

Background

NMFS has Endangered Species Act (ESA) jurisdiction of species listed at 50 CFR 223.102 and 224.101. The U.S. Fish and Wildlife Service (USFWS) adds species under NMFS jurisdiction to its official list (List), published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Shortnose sturgeon was listed as an "endangered species threatened with extinction" under the Endangered Species Preservation Act on March 11, 1967. Shortnose sturgeon as a species remained on the endangered species list with the enactment of the ESA. We are conducting a status review to update the biological information on the status of the species. The status review will not only compile and analyze the best available information on the status of and threats to the species, it will also consider if shortnose sturgeon should be identified and assessed as Distinct Population Segments (61 FR 4722; February 1, 1996). Listing or reclassifying distinct vertebrate population segments may allow us to protect and conserve species and the ecosystems upon which they depend before large-scale decline occurs; it may also allow for more timely and less costly protection and recovery on a smaller scale. Any change in the List would require a separate rulemaking process. The regulations at 50 CFR 424.21 state that we will publish a notice in the **Federal Register** announcing those species under active review. At this time we announce commencement of a status review for shortnose sturgeon, and request information regarding the status of, and factors and threats affecting, the species.

Request for Information

To support this status review, we are soliciting information relevant to the status of, and factors and threats affecting, the species, including, but not limited to, information on the following topics: (1) river-specific historical and current abundance and distribution of the species throughout its range; (2) potential factors affecting the species' current status and past or ongoing decline throughout its range by river; (3) rates of capture and release of the species from both recreational and commercial fisheries; (4) life history information (size/age at maturity, growth rates, fecundity, reproductive rate/success, preferred prey, etc.); (5) molecular information to assist in determining within-species genetic structure and distinctiveness; (6) factors and threats affecting the species' status, particularly: (a) present or threatened destruction, modification, or curtailment of habitat or range; (b) over-utilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence; and (7) any ongoing conservation efforts for the species.

If you wish to provide information for this review, see **DATES** and **ADDRESSES** for guidance on and deadlines for submitting information.

If we determine that a change to the way shortnose sturgeon is entered on the List is appropriate, we will consider the critical habitat provisions of the ESA, such as Section 3 (defining critical habitat) and Section 4 (outlining the procedural and substantive considerations regarding critical habitat) and make the necessary determinations required by those provisions. If you would like to provide information regarding the physical or biological features of shortnose sturgeon habitat, the role they play in the conservation of shortnose sturgeon, and whether any natural or human-induced factors may negatively affect those features, we will accept it at this time. Please note, however, that this notice and request for information should not be construed as an indication that we have made any statutory determinations regarding shortnose sturgeon, including whether to change the List or whether the designation of critical habitat for any newly listed entity is prudent or determinable.

Dated: November 26, 2007.

Helen Golde

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–23258 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD60

Taking of Marine Mammals Incidental to Specified Activities; An On-ice Marine Geophysical and Seismic Programs in the U.S. Beaufort Sea

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

ACTION: Notice of receipt of three applications and proposed incidental take authorizations; request for comments.

SUMMARY: NMFS has received applications from CGGVeritas (Veritas) and Shell Offshore, Inc. (SOI) for Incidental Harassment Authorizations (IHAs) to take marine mammals, by harassment, incidental to conducting an on-ice marine geophysical and seismic programs in the U.S. Beaufort Sea from February to May, 2008. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two authorizations to Veritas and one authorization to SOI to incidentally take, by harassment, small numbers of three species of pinnipeds.

DATES: Comments and information must be received no later than December 31, 2007.

ADDRESSES: Comments on the applications 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 one of the contacts listed here. The mailbox address for providing email comments is *PR1.0648–XD60@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the applications and other supporting

material related to the proposed actions may be obtained by writing to this address or by telephoning the first contact person listed here and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

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 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.

Permission shall be granted if NMFS finds that the taking will 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 if 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 for certain categories of 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 August 8 and 14, 2007, NMFS received two applications from Veritas for the taking, by harassment, of three species of marine mammals incidental to conducting on-ice seismic surveys in Smith Bay and Pt. Thomson areas of the U.S. Beaufort Sea. On September 10, 2007, NMFS received an application from SOI for the taking, by harassment, of three species of marine mammals incidental to conducting an on-ice marine geophysical survey program offshore west of Simpson Lagoon, U.S. Beaufort Sea. Veritas plans to acquire 3D seismic data within the months of February - May, 2008. The energy source for the proposed activity will be vibroseis. The proposed SOI on-ice seismic survey will also use vibroseis as energy sources, and is scheduled to begin in early March 2008 with camp mobilization expected to begin approximately March 11 from Oliktok Point. Data acquisition will begin in mid-March and continue for approximately 60 days until mid-May, followed by camp demobilization to Oliktok Point.

Description of the Activity

Veritas

The proposed Veritas projects would consist of laying recording cables with geophones on the frozen sea ice; using vibroseis techniques as the source of energy to acquire the seismic data. Seismic operations will be conducted utilizing 8 - 10 wheeled/tracked vibrators supported by Tucker SnoCats and the Challenger 95 recording cable transport vehicles. A Challenger 95 or Tucker SnoCat vehicle will travel along a pre-surveyed route and lay receiver cable lines that extend between 3 - 10 miles (4.8 - 16.1 km) long. Receiver (i.e., geophone) lines will be spaced 1,320 ft (402 m) apart; a group of 3 - 6 geophones would be located every 220 ft (67 m) along each of these lines. Ten to fifteen receiver lines will be placed on the ground at any one time all interconnected to a recording device known as a "recorder." Vibroseis vehicles will then move along a pre-determined route most often nearly perpendicular to the recording lines. Positioning of the cables, vibroseis and recording vehicles all use Tiger Nav technology, a specialized navigation and positioning software. The Tiger Nav system integrates with GPS and Inertial Technology with Real Time Positioning, Stake-less Source, Receiver Surveying and Vehicle Tracking. The Vibrators (usually 3 - 4 that travel together) move to a pre-determined GPS point location and begin vibrating in synchrony via a radio signal. The Vibrators will vibrate usually 2 - 4 times at each location, move up to the next location about 330 ft (101 m), and continue the vibrating technique until the end of the line. This activity will occur two lines at a time. Veritas utilizes satellite imagery, existing bathymetry, drill grids and ground penetrating radar (GPR) to interpret ice integrity for proper planning. To support vibroseis and recording vehicle units, an ice thickness of at least 4 feet is required.

The first specified geographic region of Veritas activities is: (1) a 569–km^2 (220–mi^2) area extending across Smith Bay from point of entry from the west at approximately 71°06′00.05″ N, 154°30′21.00″ W to the east at point of exit to land at approximately 70°54′37.03″N, 153°46′43.43″ W. Water depths in most (> 80 percent) of the area are less than 10 ft (3 m) based on bathymetry charts. The second specified geographic area is a 276–km^2 (107–mi^2) area extending across the Beaufort Sea from point of entry from the southwest corner at approximately 70°10′ 41.84″ N, 146°43′ 03.36″ W to the northwest corner at approximately 70°14′ 52.92″N, 146°42′ 15.21″ W to the southeast corner at approximately 70°08′ 43.98″ N, 145°58′10.70″W to the northeast corner off of Flaxman Island at approximately 70°11′28.82″N, 145°54′11.46″ W. Water depths in most (> 75 percent) of the area are less than 10 ft (3 m) based on bathymetry charts.

SOI

The proposed SOI on-ice marine geophysical (seismic) program would be conducted over 10 to 20 U.S. Minerals Management Service (MMS) Outer Continental Shelf (OCS) lease blocks located offshore from Oliktok Point in the Alaskan Beaufort Sea. The proposed program location is in the vicinity of Thetis and Spy Islands, north-northwest of Oliktok Point. The majority of the OCS blocks covered in the proposed program are surrounding the 33 ft (10 m) water depth contour. Assuming seismic acquisition occurred over up to 20 OCS blocks, the proposed on-ice seismic project would cover a maximum estimated 3,000 line-miles (4,828 km) of surveying within a 265 mi^2 (686 km^2) area. Two types of standard industry vibrator sources will be used on-ice, and no under-ice acoustic sources will be deployed during the on-ice marine seismic program. Receivers will be

placed primarily below ice suspended in the water column; however, a few will be placed on-ice in areas where ice is grounded in the shallow marine environment.

Surface sources will be two types of industry-standard vibrator vehicles. Vibrators will include up to: (1) Five, 68,000–lb (30,800–kg) gross vehicle weight (GVW) Input/Output wheeled vibrators ("heavy vibes") capable of 49,440 ft-lbs of force; and (2) nine, 20,000–lb (9,072–kg) GVW Envirovibs (modified to accommodate tracks), capable of 15,000 ft-lbs of force. Seismic data production is proposed to be collected by groups of four vibrators in series using either the heavy vibes or Envirovibs. Fewer than four vibrators per group may be used, but as a conservative assumption four are assumed for the maximum estimated exposure to marine mammals. Not all 14 Envirovibs and heavy vibes will be used at the same time. It is assumed that the Envirovibs will conduct approximately 75 percent of the program, with the "heavy vibes" accounting for approximately 25 percent.

The recording unit is comprised of approximately 13 tracked vehicles for crew transport and technical support, two tracked recording trailers, and several ice drilling units.

The SOI on-ice marine seismic program will also require a temporary, mobile camp facility geared to accommodate up to 120 people and will be composed of purpose-built accommodations which are largely self-sufficient for normal operations. Camp facilities are proposed to include as many as 30 to 40 sled trailers including medical facilities, crew quarters, offices, kitchen and dining facilities, laundry facilities, technical work spaces, generators, and fuel storage units. Tracked vehicles will be available for camp site support and access trail maintenance. Prospective mobile camp locations will be chosen based on ice conditions and safety of access to ice. These locations will be moved along with the project as it progresses within the area. The temporary, mobile camp will be stationed on grounded ice alongside the project. Mobilization and demobilization of the camp and equipment will take place from Oliktok Point. Resupply operations will periodically be required for fuel and provisions, and will come from Deadhorse through Oliktok Dock to the mobile field camp.

Description of Marine Mammals Affected by the Activity

Four marine mammal species are known to occur within the proposed survey areas: ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca largha*), and polar bear (*Ursus maritimus*). None of these species are listed under the Endangered Species Act (ESA) as endangered or threatened species. Other marine mammal species that seasonally inhabit the Beaufort Sea, but are not anticipated to occur in the project area during the proposed on-ice activities, include bowhead whales (*Balaena mysticetus*) and beluga whales (*Delphinapterus leucas*). Veritas and SOI will seek a take Authorization from the U.S. Fish and Wildlife Service (USFWS) for the incidental taking of polar bears because USFWS has management authority for this species. A detailed description of these species can be found in Angliss and Outlaw (2007), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2007.pdf*. Additional information on the 3 pinniped species is presented below.

Ringed Seals

Ringed seals are widely distributed throughout the Arctic basin, Hudson Bay and Strait, and the Bering and Baltic seas. Ringed seals inhabiting northern Alaska belong to the subspecies *P. h. hispida*, and they are year-round residents in the Beaufort Sea.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost *et al.*, 1999). Breathing holes are established in landfast ice as the ice forms in autumn and are maintained by seals throughout winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989). Some holes may be abandoned as winter advances, probably in order for seals to conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over 10 m (33 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, pers. comm., June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid-May through July, ringed seals haul out in the open air at holes and along cracks to bask in the sun and molt.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors but a consistent pattern of seal use has been documented since aerial survey monitoring began over 20 years ago. Recent studies indicate that ringed seals show a strong seasonal and habitat component to structure use (Williams *et al.*, 2006), and habitat, temporal, and weather factors all had significant effects on seal densities (Moulton *et al.*, 2005). The studies also showed that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors (Moulton *et al.*, 2005; Williams *et al.*, 2006).

A reliable estimate for the entire Alaska stock of ringed seals is currently not available (Angliss and Outlaw, 2007). A minimum estimate for the eastern Chukchi and Beaufort Sea is 249,000 seals, including 18,000 for the Beaufort Sea (Angliss and Outlaw, 2007). The actual numbers of ringed seals are substantially higher, since the estimate did not include much of the geographic range of the stock, and the estimate for the Alaska Beaufort Sea has not been corrected for animals missed during the surveys used to derive the abundance estimate (Angliss and Outlaw, 2007). Estimates could be as high as or approach the past estimates of 1 - 3.6 million ringed seals in the Alaska stock (Frost, 1985; Frost *et al.*, 1988).

Frost and Lowry (1999) reported an observed density of 0.61 ringed seals/km^2 on the fast ice from aerial surveys conducted in spring 1997 of an area overlapping the activity area, which is in the range of densities (0.28 - 0.66) reported for the Northstar development from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61) was adjusted to account for seals hauled out but not sighted by observers (x 1.22, based on Frost *et al.* (1988)) and seals not hauled out during the surveys (x 2.33, based on Kelly and Quakenbush (1990)) to obtain an density of 1.73 ringed seals/km^2. This estimate covered an area from the coast to about 2 - 20 miles beyond the activity area; and it assumed that habitat conditions were uniform.

Bearded Seals

The bearded seal has a circumpolar distribution in the Arctic, and it is found in the Bering, Chukchi, and Beaufort seas (Jefferson *et al.*, 1993). Bearded seals are predominately benthic feeders, and prefer waters less than 200

m (656 ft) in depth. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Jefferson *et al.*, 1993). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977).

Seasonal movements of bearded seals are directly related to the advance and retreat of sea ice and to water depth (Kelly, 1988). During winter they are most common in broken pack ice and in some areas also inhabit shorefast ice (Smith and Hammill, 1981). In Alaska waters, bearded seals are distributed over the continental shelf of the Bering, Chukchi, and Beaufort seas, but are more concentrated in the northern part of the Bering Sea from January to April (Burns, 1981). Recent spring surveys along the Alaskan coast indicate that bearded seals tend to prefer areas of between 70 and 90 percent sea ice coverage, and are typically more abundant greater than 20 nm (37 km) off shore, with the exception of high concentrations nearshore to the south of Kivalina in the Chukchi Sea (Bengtson *et al.*, 2000; Simpkins *et al.*, 2003). Since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

There are no reliable population estimates for bearded seals in the Beaufort Sea or in the proposed project area (Angliss and Outlaw, 2007). Aerial surveys conducted by MMS in fall 2000 and 2001 sighted a total of 46 bearded seals during survey flights conducted between September and October (Treacy, 2002a; 2002b). Bearded seal numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981). Surveys flown from Shismaref to Barrow during May-June 1999 and 2000 resulted in an average density of 0.07 seals/km^2 and 0.14 seals/km^2, respectively, with consistently high densities along the coast of the south of Kivalina (Bengtson *et al.*, 2005). These densities cannot be used to develop an abundance estimate because no correction factor is available.

Spotted Seals

Spotted seals occur in the Beaufort, Chukchi, Bering, and Okhotsk seas, and south to the northern Yellow Sea and western Sea of Japan (Shaughnessy and Fay, 1977). Based on satellite tagging studies, spotted seals migrate south from the Chukchi Sea in October and pass through the Bering Strait in November and overwinter in the Bering Sea along the ice edge (Lowry *et al.*, 1998). In summer, the majority of spotted seals are found in the Bering and Chukchi seas, but do range into the Beaufort Sea (Rugh *et al.*, 1997; Lowry *et al.*, 1998) from July until September. The seals are most commonly seen in bays, lagoons, and estuaries and are typically not associated with pack ice at this time of the year.

A small number of spotted seal haul-outs are documented in the central Beaufort Sea near the deltas of the Colville and Sagavanirktok rivers (Johnson *et al.*, 1999). Previous studies from 1996 to 2001 indicate that few spotted seals (a few tens) utilize the central Alaska Beaufort Sea (Moulton and Lawson, 2002; Treacy, 2002a; 2002b). In total, there are probably no more than a few tens of spotted seals along the coast of central Alaska Beaufort Sea.

A reliable abundance estimate for spotted seal is not currently available (Angliss and Outlaw, 2005), however, early estimates of the size of the world population of spotted seals was 335,000 to 450,000 animals and the size of the Bering Sea population, including animals in Russian waters, was estimated to be 200,000 to 250,000 animals (Burns, 1973). The total number of spotted seals in Alaskan waters is not known (Angliss and Outlaw, 2007), but the estimate is most likely between several thousand and several tens of thousands (Rugh *et al.*, 1997). Using maximum counts at known haulouts from 1992 (4,135 seals), and a preliminary correction factor for missed seals developed by the Alaska Department of Fish and Game (Lowry *et al.*, 1998), an abundance estimate of 59,214 was calculated for the Alaska stock (Angliss and Outlaw, 2007).

Potential Effects on Marine Mammals and Their Habitat

Incidental harassment to marine mammals could result from physical activities associated with on-ice seismic operations, which have the potential to disturb and temporarily displace some seals. For ringed seals, pup mortality could occur if any of these animals were nursing and displacement were protracted. However, it is unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities, potential predators, and the typical movement patterns of ringed seal pups among different holes. Ringed seals also use as many as four lairs spaced as far as 3,437 m (11,276 ft) apart. In addition, seals have multiple breathing holes. Pups may use more holes than adults, but the holes are generally closer together than those used by adults. This indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given those considerations, combined with the small proportion of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the ringed, bearded, and spotted seal populations.

The seismic surveys would only introduce acoustic energy into the water column and no objects would be released into the environment. In addition, the total footprint of the proposed seismic survey areas represent only a small fraction of the Beaufort Sea pinniped habitat. Sea-ice surface rehabilitation is often immediate, occurring during the first episode of snow and wind that follows passage of the equipment over the ice.

Number of Marine Mammals Expected to Be Taken

NMFS estimates that up to 984 ringed seals (0.39 percent of estimated total Alaska population of 249,000) could be taken by Level B harassment due to Veritas' Smith Bay on-ice seismic survey, up to 477 seals (0.19 percent of total population) by Veritas' Pt. Thomson on-ice seismic surveys, and up to 1,187 seals (0.47 percent of total population) by SOI's on-ice geographical program. The estimated take numbers are based on consideration of the number of ringed seals that might be disturbed within each of the proposed project areas, calculated from the adjusted ringed seal density of 1.73 seal per km^2 (Kelly and Quakenbush, 1990).

Due to the unavailability of reliable bearded and spotted seals densities within the proposed project area, NMFS is unable to estimate take numbers for these two species. However, it is expected much fewer bearded and spotted seals would subject to takes by Level B harassment since their occurrence is very low within the proposed project areas, especially during spring (Moulton and Lawson, 2002; Treacy, 2002a; 2002b; Bengtson *et al.*, 2005). Consequently, the levels of take of these two pinniped species by Level B harassment within the proposed project areas would represent only small fractions of the total population sizes of these species in Beaufort Sea.

In addition, NMFS expects that the actual take by Level B harassment from the proposed on-ice seismic programs would be much lower than the estimates

due to the implementation of the proposed mitigation and monitoring measures discussed below. Therefore, NMFS believes that any potential impacts to ringed, bearded, and spotted seals to the proposed on-ice geophysical seismic program would be insignificant, and would be limited to distant and transient exposure.

Potential Effects on Subsistence

The affected pinniped species are all taken by subsistence hunters of the Beaufort Sea villages. However, on-ice seismic operations in the activity areas are not expected to have an unmitigable adverse impact on availability of these stocks for taking for subsistence uses because:

(1) Operations would end before the spring ice breakup, after which subsistence hunters harvest most of their seals; and

(2) The areas where on-ice seismic operations would be conducted are small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In addition, trained dogs will be used to locate ringed seal lairs before the onset of seismic activities. Subsistence advisors will be used as marine mammal observers during performance of the seismic program. During the seal pupping season, planned seismic line segments will be surveyed via the research biologists teamed with lair sniffing dogs; these teams will be accompanied by Inupiat subsistence hunters experienced in the area of the project.

For the two proposed Veritas on-ice seismic projects, most of the anticipated program areas are within 3 - 4 miles (4.8 - 6.4 km) of the coast on the proposed surveys. The proposed on-ice seismic surveys are not thought to hinder subsistence harvest greatly during the timing of the programs. For the proposed Smith Bay project, Nuiqsut and Barrow are the closest communities to the area of the proposed activity; while for the proposed Pt. Thomson project, Kaktovik is the closest community to the area of the proposed activity. Veritas will consult with the potentially affected subsistence communities of Barrow, Nuiqsut, Kaktovik, and other stakeholder groups to develop a Plan of Cooperation. Veritas' joint venture partner on the North Slope is the Kuukpik Corporation.

For the proposed SOI on-ice geophysical program, Plan of Cooperation meetings in the communities of Nuiqsut and Barrow are being held during October 2007. Additional following up meetings are tentatively scheduled for early winter 2008 in the affected communities to ensure that there will be no unmitigable impacts to subsistence use of marine mammal species/stocks resulting from the proposed on-ice geophysical program.

Mitigation and Monitoring

The following mitigation and monitoring measures are proposed for the subject on-ice seismic surveys. All activities will be conducted as far as practicable from any observed ringed seal lair and no energy source will be placed over a seal lair.

Trained seal lair sniffing dogs will be employed by Veritas and SOI for areas of sea ice beyond 3 m (9.8 ft) depth contour to locate seal structures under snow (subnivean) before the seismic program begins. The areas for the proposed projects will be surveys for the subnivean seal structures using trained dogs running together. Transects will be spaced 250 m (820 ft) apart and oriented 90o to the prevailing wind direction. The search tracks of the dogs will be recorded and marked. Subnivean structures will be probed by a steel rod to check if each is open (active), or frozen (abandoned). Structures will be categorized by size, structure and odor to ascertain whether the structure is a birth lair, resting lair, resting lair of rutting male seals, or a breathing hole. Any locations of seal structures will be marked and protected by a with 150 m (490 ft) exclusion distance from any existing routes and on-ice seismic activities. During active seismic vibrator source operations, the 150–m (490–ft) exclusion zone will be monitored for entry by any marine mammals.

In addition, NMFS proposes to require applicants' vehicles to avoid any pressure ridges, ice ridges, and ice deformation areas where seal structures are likely to be present.

Reporting

NMFS proposes to require annual reports that must be submitted to NMFS within 90 days of completing the year's activities.The reports would contain detail descriptions of any marine mammal, by species, number, age class, and sex if possible, that is sighted in the vicinity of the proposed project areas; description of the animal's observed behaviors and the activities occurring at the time.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing the incidental harassment authorizations under section 101(a)(5)(D) of the MMPA to Veritas and SOI for these three proposed on-ice seismic survey projects.

National Environmental Policy Act (NEPA)

The information provided in the Final Programmatic Environmental Assessment (EA) on the *Arctic Ocean outer Continental Shelf Seismic Surveys - 2006* prepared by the MMS in June 2006 led NMFS to conclude that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed actions discussed in this document are not substantially different from the 2006 actions, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years that would warrant new NEPA documentation.

Preliminary Conclusions

In summary, the anticipated impact of the proposed on-ice seismic programs on the species or stocks of ringed, bearded, and spotted seals is expected to be negligible for the following reasons:

(1) The proposed activities would only occur in a small area which supports a small proportion (approximately 1 percent) of the Alaska stock of ringed seals. The numbers of bearded and spotted seals within the proposed project area is expected to be even lower than that of ringed seals.

(2) The following mitigation and monitoring procedures would be implemented: (a) using trained seal lair sniffing dogs to conduct pre-operational surveys in areas of sea ice beyond 3 m (9.8 ft) and monitoring of ringed seal lairs and breathing holes within the proposed action areas; (b) conducting activities as far away from any observed seal structures as possible; (c) establishing exclusion zones with 150 m (490 ft) from locations of seal structures; (d) vehicles to avoid any pressure ridges, ice ridges, and ice deformation areas where seal structures are likely to be present.

NMFS believes the effects of the three on-ice seismic surveys by Veritas and SOI are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of ringed seals, and may also potentially affect any bearded and spotted seals in the vicinity. Also, the potential effects of the proposed on-ice seismic survey projects during 2008 will not have an

unmitigable adverse impact on subsistence uses of these species.

Proposed Authorization

NMFS proposes to issue two IHAs to Veritas and one IHA to SOI for conducting on-ice seismic surveys in the U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities each would result in the harassment of small numbers of ringed seals, and potentially any bearded and spotted seals in the vicinity; would have no more than a negligible impact on the affected pinniped species and stocks; and would not have an unmitigable adverse impact on the availability of seals for subsistence uses.

Dated: November 26, 2007.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–23255 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE11

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Committee will meet December 17–18, 2007, in Anchorage, AK.

DATES: The meeting will be held on December 17, from 8:30 a.m. to 5 p.m., and on December 18, from 8:30 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Hilton Hotel, Iliamna Room, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, North Pacific Fishery Management Council, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will focus on programmatic issues and the effects of policy decisions related to the Bering Sea Aleutian Island crab rationalization program. The Committee will also discuss potential solutions to concerns that may arise from any adjustments to the A share/B share split, including compensation to processors from harvesters for lost economic opportunity from a shift in market power, change in landing distribution, the remaining need and necessary changes to the binding arbitration program, use and effectiveness of regional landing requirements to protect communities, and respective impacts on crew; potential solutions to existing data needs, including the need for exvessel prices, by share type and region, and first wholesale price information.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: November 27, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–23206 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Agreed Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 27, 2007.

AGENCY: Committee for the Implementation of Textiles Agreements (CITA).

ACTION: Directive to Commissioner, U.S. Customs and Border Protection (CBP) establishing agreed levels.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to U.S. Customs and Border Protection website (*http://www.cbp.gov*), or call (202) 863–6560. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In the Memorandum of Understanding (MOU) between the Governments of the United States of America and the People's Republic of China concerning Trade in Textile and Apparel Products, signed and dated November 8, 2005, and Paragraph 242 of the *Report of the Working Party for the Accession of China to the World Trade Organization*, the Governments of the United States and China established agreed levels for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported to the United States during three one-year periods beginning on January 1, 2006 and extending through December 31, 2008.

The agreed levels published below may be adjusted during the course of the year for "carryover," or "carryforward" used in 2007, under the terms of the MOU. The limits for Categories 345/645/646 and 352/652 below have been adjusted for carryforward applied to the 2007 limits.

Baby socks in HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 shall be counted in dozen pairs. These baby socks are subject to the quota level for 332/432/632–T and the sublevel for 332/432/632–B but the correct category designation 239 will be required at the time of entry for quota purposes.

In the letter published below, the Chairman of CITA directs the Commissioner, U.S. Customs and Border Protection (CBP), to establish the 2008 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to

the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*).

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2007.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to the Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China, Concerning Trade in Textiles and Apparel Products, dated November 8, 2005, you are directed to prohibit, effective on January 1, 2008, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories and HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2008 and extending through December 31, 2008, in excess of the following agreed levels:

Category	Restraint Period
200/301	10,131,052 kilograms.
222	21,482,908 kilograms.
229	45,007,492 kilograms.
332/432/632-T (plus baby socks) [1]	85,058,437 dozen pairs, of which not more than 80,866,195 dozen pairs shall be in categories 332/432/632-B (plus baby socks) [2].
338/339pt. [3]	26,938,606 dozen.
340/640	8,724,590 dozen.
345/645/646	10,581,854 dozen.
347/348	25,442,951 dozen.
349/649	29,479,266 dozen.
352/652	24,302,011 dozen.
359-S/659-S [4]	5,990,767 kilograms.
363	134,828,519 numbers.
443	1,756,637 numbers.
447	280,581 dozen.
619	72,177,600 square meters.
620	103,755,190 square meters.
622	43,412,575 square meters.
638/639pt. [5]	10,427,707 dozen.
647/648pt. [6]	10,298,709 dozen.
666pt. [7]	1,268,884 kilograms.
847	23,029,668 dozen.

[1] Categories 332/432/632–T: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.10.4000, 6115.10.5500, 6115.30.9010, 6115.96.6020, 6115.99.1420, 6115.96.9020, 6115.99.1920.

[2] Categories 332/432/632-B: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.10.4000, 6115.10.5500, 6115.96.6020, 6115.96.9020, 6115.99.1420, 6115.99.1920.

[3] Categories 338/339pt: all HTS numbers except: 6110.20.1026, 6110.20.1031, 6110.20.2067, 6110.20.2077, 6110.90.9067, and 6110.90.9071.

[4] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[5] Categories 638/639pt.: all HTS numbers except: 6110.30.2051, 6110.30.2061, 6110.30.3051, 6110.30.3057, 6110.90.9079, and 6110.90.9081.

[6] Categories 647/648pt.: all HTS numbers except 6203.43.3510, 6204.63.3010, 6210.40.5031, 6210.50.5031, 6211.20.1525 and 6211.20.1555.

[7] Category 666pt.: only HTS numbers 6303.12.0010 and 6303.92.2030.

Baby socks in HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 shall be counted in dozen pairs for quota purposes. These baby socks are subject to the quota level for 332/432/632–T and the sublevel for 332/432/632–B but the correct category designation 239 will be required at the time of entry for quota purposes.

The agreed levels set forth above are subject to adjustment pursuant to the current MOU between the Governments of the United States and China.

Products in the above categories and HTS numbers 6111.20.6050, 6111.30.5050, and 6111.90.5050 exported during 2007 shall be charged to the applicable category limits for that year (see directive dated October 23, 2006) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Sincerely,
R. Matthew Priest,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–23304 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 27, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Bureau of Customs and Border Protection website (*http://www.cbp.gov*), or call (202) 863–6560. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the Memorandum of Understanding between the Governments of the United States and the People's Republic of China concerning Trade in Texile and Apparel Products, signed and dated on November 8, 2005, the current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 71 FR 62999, published on October 27, 2006). Also see 71 FR 65090 published on November 7, 2006.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2007.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 2006, as amended on November 2, 2006, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2007 and extends through December 31, 2007.

Effective on November 30, 2007, you are directed to adjust the current limits for the following categories, as provided for under the terms of the Memorandum of Understanding between the Governments of the United States and the People's Republic of China concerning Trade in Texile and Apparel Products, signed and dated on November 8, 2005:

Category	Adjusted twelve-month limit [1]
345/645/646	9,477,660 dozen.
352/652	21,957,081 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 2006.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–23303 Filed 11–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 29, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 21, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program Teacher Loan Forgiveness Forms.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; individuals or household; not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,700.

Burden Hours: 2,871.

Abstract: These forms serve as the means by which eligible borrowers in the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program apply for teacher loan forgiveness and request forbearance on their loans while performing qualifying teaching service.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3533. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–23186 Filed 11–29–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0081; FRL–8500–1]

Agency Information Collection Activities; Proposed Collections; Comment Request; Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal), EPA ICR No. 1230.17, OMB Control No. 2060–0003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2008. Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 29, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0081, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Fax:* (202) 566–7944.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW., Mail Code 2822T, Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0081. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through *www.regulations.gov* or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means we 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 us 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, we recommend 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, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Carrie Wheeler, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504–05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–9771; fax number: (919) 541–5509; e-mail address: *wheeler.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0081 which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collections of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID numbers identified in this document.

What Information Particularly Interests EPA?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID numbers assigned to these actions in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To What Information Collection Activity or ICR Does This Apply?

Docket ID No. EPA–HQ–OAR–2004–0081.

Affected entities: Entities potentially affected by this action are those which must apply for and obtain a preconstruction permit under parts C or D of title I of the Clean Air Act (Act).

Title: Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal).

ICR number: EPA ICR No. 1230.17, OMB Control No. 2060–0003.

ICR status: This ICR is scheduled to expire on January 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Part C of the Clean Air Act (Act)—"Prevention of Significant Deterioration," and Part D—"Plan Requirements for Nonattainment Areas," require all States to adopt preconstruction review programs for new or modified stationary sources of air pollution. In addition, the provisions of section 110 of the Act include a requirement for States to have a preconstruction review program to manage the emissions from the construction and modification of any stationary source of air pollution to assure that the National Ambient Air Quality Standards (NAAQS) are achieved and maintained. Implementing regulations for these three programs are promulgated at 40 CFR 51.160 through 51.166 to part 51 and 40 CFR 52.21 and 52.24. In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory NSR requirements. Specific activities and requirements are

listed and described in the Supporting Statement for the ICR.

Reviewing authorities, either State, local or Federal, review the permit application and provides for public review of the proposed project and issues the permit based on its consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the State and local programs for their effectiveness. Consequently, information prepared and submitted by the source is essential for the source to receive a permit, and for Federal, State and local environmental agencies to adequately review the permit application and thereby properly administer and manage the NSR programs.

Information that is collected and handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2). See also section 114(c) of the Act.

Burden Statement: 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.

The annual public reporting and recordkeeping burden for this collection of information is broken down as follows:

Type of permit action	Major PSD	Major Part D	Minor
Number of Sources	282	519	74,591
Burden Hours per Response:			
Industry	839	577	40
Permitting Agencies	272	109	30
Total Annual Burden Hours:			
Industry	236,262	299,578	2,983,640
Permitting Agencies	76,595	56,593	2,237,730

Respondents/Affected Entities: Industrial plants, State and local permitting agencies.

Estimated Number of Respondents: 150,784.

Estimated Total Annual Burden: 5,890,399 hours.

Are There Changes in the Estimates From the Last Approval?

Since the last renewal of this ICR (November 2, 2004; 69 FR 63530), the estimated number of respondents has increased by 51 due to the decision by the U.S. Court of Appeals for the D.C. Circuit to vacate the Clean Units and Pollution Control Project Exclusion provisions of the NSR program. *See New York* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005). As a result, the total annual burden has been increased by 39,273 hours. The burden per type of permit remains unchanged.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about these ICRs or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: November 21, 2007.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–23296 Filed 11–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6693–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070359, ERP No. DS–BLM–L65462–AK, Northeast National Petroleum Reserve—Alaska Integrated Activity Plan, Updated Information, addressing the need for more Oil and Gas Production through Leasing Lands, Consideration of 4 Alternatives, North Slope Borough, AK.

Summary: EPA expressed environmental objections to each action alternative because of potential adverse impacts to wetlands, aquatic habitat and fish and wildlife. EPA suggests considering an alternative that will reduce the potential impacts, especially to water quality, by retaining the current leasing acreage, and surface activity restrictions, incorporating both performance based stipulations and Required Operating Procedures until data on effectiveness of these measures become available.

Rating EO2.

Final EISs

EIS No. 20070398, ERP No. F–BLM–L65510–AK, Kobuk-Seward Peninsula Resource Management Plan, from Point Lay to the North Sound and from the Bering and Chukchi Seas East to the Kobuk River, AK.

Summary: While the final EIS provides for the development of a habitat management plan, EPA continues to have environmental concerns about impacts to resources from the lack of specific requirements for the abandonment, removal, and reclamation of activities relating to resource exploration, development, and operation after leases have expired and operations have cease.

EIS No. 20070418, ERP No. F–NPS–E65078–NC, North Shore Road, Great Smoky Mountains National Park,

General Management Plan, Implementation, Fontana Dam, Swain County, NC.

Summary: EPA does not object to the selection of the preferred alternative.

EIS No. 20070433, ERP No. F–BIA–L65495–ID, PROGRAMMATIC—Coeur d' Alene Tribe Integrated Resource Management Plan, Implementation, Coeur d' Alene Reservation and Aboriginal Territory, ID.

Summary: No formal comment letter was sent to the preparing agency.

Dated: November 27, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–23242 Filed 11–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6693–5]

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 11/19/2007 through 11/23/2007.

Pursuant to 40 CFR 1506.9.

EIS No. 20070500, Final EIS, COE, CA, Berth 136–147 [TraPac] Container Terminal Project, Upgrade Existing Wharf Facilities, Install a Buffer Area between the Terminal and Community, U.S. Army COE section 10 and 404 Permit, West Basin Portion of the Port of Los Angeles, CA. Wait Period Ends: 01/02/2008. Contact: Dr. Spencer D. MacNeil 805–585–2152.

EIS No. 20070501, Final EIS, BLM, NV, Ely District Resource Management Plan, Implementation, White Pine, Lincoln Counties and a Portion of Nye County, NV. Wait Period Ends: 01/02/2008. Contact: Jeff Weeks 775–289–1825.

EIS No. 20070502, Final EIS, FHW, NE, U.S. Highway 34, Plattsmouth Bridge Study, over the Missouri River between U.S. 75 and I–29, Funding, Coast Guard Permit, U.S. Army COE 10 and 404 Permits, Cass County, NE and Mills County, IA. Wait Period Ends: 01/02/2008. Contact: Edward W. Kosola 402–437–5975.

EIS No. 20070503, Draft EIS, AFS, AK, Navy Timber Sale Project, To Address the Potential Effects of Timber Harvesting on Etolin Island, Wrangell Ranger District, Tongass National Forest, AK. Comment Period Ends: 01/14/2008. Contact: Frank Roberts 907–874–7556.

EIS No. 20070504, Draft EIS, FRC, 00, Rockies Express Pipeline Project, (REX–East), Construction and Operation of Natural Gas Pipeline Facilities, WY, NE, MO, IL, IN and OH, Comment Period Ends: 01/14/2008. Contact: Andy Black 1–866–208–3372.

EIS No. 20070505, Final EIS, WPA, CA, Trinity Public Utilities District Direct Interconnection Project, Construct and Operate a 16-mile Long 60-Kilovolt Power Transmission Facilities, (DOE/EIS–0389, Trinity County, CA, Wait Period Ends: 01/02/2008. Contact: Mark Wieringa 720–962–7448.

Amended Notices

EIS No. 20070420, Draft EIS, SFW, CA, Agua Caliente Tribal Habitat Conservation Plan (THCP), Application for an Incidental Take Permit for 24 Covered Species, Coachella Valley, Riverside County, CA, Comment Period Ends: 01/10/2008. Contact: Jim Bartel 760–431–9440. Revision to FR Notice Published 10/12/2007: Correction to Comment Period from 11/26/2007 to 01/10/2008.

EIS No. 20070478, Final EIS, AFS, AK, Helicopter Access to Conduct Forest Inventory and Analysis (FIA) in Wilderness, in Tongass and Chugach National Forest, AK. Wait Period Ends: 12/24/2007. Contact: Ken Post 907–586–8796. Review to FR Notice Published 11/09/2007: Correction to Title.

Dated: November 27, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–23241 Filed 11–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8500–3]

Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Science Advisory Board Radiation Advisory Committee MARSAME Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Radiation Advisory Committee (RAC) augmented with additional experts to review the draft document entitled "Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME) Manual," December 2006.

DATES: The SAB Radiation Advisory Committee (RAC) MARSAME Review Panel will hold public teleconferences on Friday, December 21, 2007 from 11 a.m. to 2 p.m. (Eastern Standard Time) and Monday, March 10, 2008 from 1 p.m. to 4 p.m. (Eastern Standard Time).

ADDRESSES: The public teleconferences on Friday, December 21, 2007 and Monday, March 10, 2008 will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code for the public teleconferences may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), by mail at the EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9984; by fax at (202) 233–0643; or by e-mail at: *kooyoomjian.jack@epa.gov.* General information concerning the SAB can be found on the SAB Web Site at: *http://www.epa.gov/sab.*

Technical Contact: For questions and information concerning the draft MARSAME document, background information, as well as briefing and other background materials provided to the RAC MARSAME Review Panel which are pertinent to the teleconferences in this notice, please contact Dr. Mary E. Clark of the U.S. EPA, ORIA by telephone at: (202) 343–9348, fax at (202) 243–2395, or e-mail at *clark.marye@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The EPA's Office of Radiation and Indoor Air (ORIA) on behalf of the Federal agencies participating in the development of the MARSAME Manual (see below) requested the SAB to provide advice on a draft document entitled "Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME) Manual," December 2006. MARSAME is a supplement to the "Multi-Agency Radiation Survey and Site Investigation Manual" (MARSSIM, EPA 402–R–970–016, Rev.1, August 2000 and June 2001 update). The SAB Staff Office announced this advisory activity and requested nominations for technical experts to augment the SAB's Radiation Advisory Committee (RAC) in the **Federal Register** (72 FR 11356;

March 13, 2007). The first teleconference of the RAC's MARSAME Review Panel took place on Tuesday, October 9, 2007 and the face-to-face review meeting took place in the Washington, DC area on October 29, 30 and 31, 2007 (72 FR: 54255; September 24, 2007). MARSAME was developed collaboratively by the multi-agency work group (60 FR 12555; March 7, 1995) and provides technical information on approaches for planning, conducting, evaluating, and documenting radiological disposition surveys to determine proper disposition of materials and equipment (M&E). The multi-agency work group which developed the MARSAME manual consists of the U.S. Department of Defense (DOD); the U.S. Department of Energy (DOE); the U.S. Environmental Protection Agency (EPA); and the U.S. Nuclear Regulatory Commission (NRC).

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the SAB Staff Office hereby gives notice of two public teleconferences of the SAB Radiation Advisory Committee (RAC) augmented to deal with this subject. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The augmented RAC will comply with the provisions of FACA and all appropriate SAB procedural policies.

Purpose of the Teleconferences: The purpose of the teleconferences is to discuss the draft report being prepared by the SAB RAC MARSAME Review Panel in response to the charge questions pertaining to the draft MARSAME Manual, dated December 2006 prepared by the multi-agency work group.

Availability of Meeting Materials: A roster of the RAC MARSAME Review Panel members, and the charge to the SAB's RAC MARSAME Review Panel is posted on the SAB Web Site at: (*http://www.epa.gov/sab*). The latest draft public report to be discussed, which is currently under preparation, along with the meeting agenda will be posted onto the SAB Web Site prior to the teleconferences. The draft document, "*Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME) Manual,*" December 2006 (NUREG–1575, Supp. 1; EPA 402–R–06–002; and DOE/EH–707) is available at: *http://63.151.45.33/marsame/system/index.cfm*. In addition to the hotlink above, the charge to the RAC's MARSAME Review Panel, and other supplemental information may be found at the SAB Web Site (*http://www.sab.gov/sab*).

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail seven days prior to the teleconference dates. For the December 21, 2007 teleconference, the deadline is Friday, December 14, 2007. For the March 10, 2008 teleconference, the deadline is Monday, March 3, 2008 to be placed on the public speaker list.

Written Statements: Written statements should be received in the SAB Staff Office seven days prior to the teleconferences. For the Friday, December 21, 2007 teleconference, the deadline is Friday, December 14, 2007; for the March 10, 2008 teleconference, the deadline is Monday, March 3, 2008, so that the information may be made available to the SAB RAC MARSAME Review Panel for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *kooyoomjian.jack@epa.gov* (*acceptable file format:* Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: For information on access or services for individuals with disabilities, please contact the DFO, contact information provided above. To request accommodation of a disability, please contact the DFO, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 26, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–23298 Filed 11–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–1148; FRL–8500–2]

Board of Scientific Counselors, Computational Toxicology Subcommittee Meeting—December 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Computational Toxicology Subcommittee.

DATES: The meeting will be held on Monday, December 17, 2007, from 1 p.m. to 5 p.m. The meeting will continue on Tuesday, December 18, 2007, from 8:30 a.m. to 3 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the U.S. EPA Research Triangle Park (RTP) Campus, EPA Main Building (Room C114 on December 17 and Room C111C on December 18), 109 T. W. Alexander Dr., Research Triangle Park, North Carolina 27711. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–1148, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2007–1148.
- *Fax*: Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–1148.
- *Mail*: Send comments by mail to: Board of Scientific Counselors, Computational Toxicology Subcommittee Meetings—end 2007/early 2008 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–1148.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–1148.

Note: This is not a mailing address. Such deliveries are only accepted during the

docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–1148. 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 Board of Scientific Counselors, Computational Toxicology Subcommittee Meetings—end 2007/early 2008 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: overview of National Center for Computational Toxicology (NCCT) activities; presentations of NCCT work on ToxCast, IM/IT (information management/information technology)—informatics, a Virtual Liver, developmental systems biology, and arsenic biologically-based dose response model (BBDR); wrap up with presentation of preliminary findings; and discussion of the draft letter report. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 21, 2007.

Jeff Morris,

Acting Director, Office of Science Policy.

[FR Doc. E7–23297 Filed 11–29–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 14, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jose L. Evans, Denise K. Evans (acting jointly), David L. Johnson and Sandra L. Castetter, all of Kansas City, Missouri, acting jointly, together, and acting in concert; to acquire votings shares of First Missouri Bancshares, Inc., and thereby indirectly acquire voting shares of First Missouri National Bank, both in Brookfield, Missouri.

Board of Governors of the Federal Reserve System, November 26, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–23178 Filed 11–29–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Metropolitan BancGroup, Inc., Ridgeland, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of BancSouth Financial Corporation and Bank of the South, both of Crystal Springs, Mississippi.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Franklin Resources, Inc., San Mateo, California; to retain 5.15 percent of the voting shares of Commerce Bancorp, Inc., and thereby indirectly retain voting shares of Commerce Bank, N.A., both of Cherry Hill, New Jersey.

Board of Governors of the Federal Reserve System, November 26, 2007.

Jennifer J. Johnseon,

Secretary of the Board.

[FR Doc. E7–23179 Filed 11–29–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 062 3042]

Budget Rent-A-Car System, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 20, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Budget Rent-A-Car System, File No. 062 3042," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Lisa Rosenthal or Sarah Schroeder, FTC Western Region, San Francisco, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (415) 848-5100.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 20, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/11/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order with Budget Rent-A-Car System, Inc. ("Budget"), one of the nation's largest rental car agencies.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns deceptive practices by Budget with respect to an automatic, flat "EZ Fuel" fee it charges to renters who drive fewer than 75 miles, regardless of whether they return their rental with a full gas tank, unless they present a receipt. Budget has failed to adequately disclose the EZ Fuel fee or how renters can have the fee reversed.

The complaint alleges that Budget engaged in deceptive practices relating to its EZ-Fuel program. The complaint alleges that Budget has falsely represented that, if consumers return their rental vehicle with a full gas tank, they will not have to pay any fuel-related charge, fee, or cost. In numerous instances, however, consumers who drive their vehicle fewer than 75 miles

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

will have to pay the EZ Fuel fee, regardless of whether they return the vehicle with a full gas tank, unless they present a gas receipt.

The complaint further alleges that Budget failed to disclose and failed to disclose adequately that consumers who drive their rental vehicle fewer than 75 miles and refuel can have the EZ Fuel fee reversed only if they present a fuel receipt. In addition, Budget failed to disclose that consumers without corporate accounts would have to present their fuel receipt inside at the rental counter after returning their rental vehicle and checking out on the return lot. These facts would be material to consumers in their rental transaction. The failure to disclose these facts, in light of the representations made, was a deceptive practice.

The proposed order contains provisions designed to prevent Budget from engaging in similar acts and practices in the future. Part I prohibits Budget from misrepresenting (A) that renters who return their vehicle with a full tank of gas will not incur any fuel-related charges; (B) any fuel-related charge, fee, cost, or requirement; or, (C) any charge, fee, or cost, or term or condition, relating to the rental of any vehicle." Part II of the proposed order requires that Budget disclose, clearly and conspicuously, at the time of rental transaction: (A) any fuel related charges, fee, or costs; (B) any material requirements related to the fuel-related charge; and (C) the manner, if any, in which the renter can avoid such fuel-related charges. Finally, Part III of the proposed order prohibits Budget from making any representation about the benefits, costs, or parameters of any fuel-related option unless it discloses clearly and conspicuously, and in close proximity to the representation, any material terms or conditions relating to that fuel option. These conduct provisions prohibit the deceptive practices alleged in the complaint, but do not prohibit Budget from imposing fuel-related charges, so long as such charges are disclosed as required by the proposed order.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Budget to retain documents relating to its compliance with the order. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Budget submit compliance reports to the FTC. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to modify the terms of the proposed order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–23293 Filed 11–29–07: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 071 0132]

Schering-Plough Corporation; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Schering-Plough, File No. 071 0132," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Jacqueline K. Mendel, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326–2603.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 16, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Schering-Plough Corporation ("Schering-Plough"), which is designed to remedy the anticompetitive effects of its acquisition of Organon BioSciences N.V. ("Organon BioSciences") from Akzo-Nobel N.V. ("Akzo-Nobel"). Under the terms of the proposed Consent Agreement, Schering-Plough would be required to divest to Wyeth: (1) the Schering-Plough rights and assets necessary to develop, manufacture, and market live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry; (2) the rights and assets necessary to develop, manufacture, and market live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry; and (3) the rights and assets necessary to develop, manufacture, and market live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* ("MG") in poultry.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order ("Order").

Pursuant to the terms of a Letter of Intent dated March 12, 2007, Schering-Plough proposes to acquire from Akzo Nobel 100 percent of the outstanding shares of Organon BioSciences voting stock. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the manufacture and sale of the following poultry vaccines: (1) live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry; (2) live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry; and (3) live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry. The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

The Products and Structure of the Markets

The markets for the Georgia 98 strain of infectious bronchitis, fowl cholera, and live MG vaccines are highly concentrated, with Schering-Plough and Intervet accounting for significant market shares in each of these markets. The proposed acquisition would create a monopolist in the live Georgia 98 vaccine market and would give Schering-Plough shares of approximately eighty-five percent and seventy-two percent in the markets for live fowl cholera and live MG vaccines, respectively.

The Georgia 98 strain of infectious bronchitis is a highly contagious respiratory disease in poultry spread by contact with infected respiratory discharge and feces. Live Georgia 98 vaccines are the only vaccines that can effectively prevent and treat the Georgia 98 strain of infectious bronchitis virus. Other infectious bronchitis virus vaccine strains, administered either individually or in multiple-antigen combination vaccines, do not provide adequate protection against the Georgia 98 serotype to act as a sufficient alternative to the live Georgia 98 vaccines. The relevant market for the manufacture, distribution, and sale of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry in the United States is highly concentrated. Respondent Schering-Plough and Organon BioSciences are the only suppliers of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry in the United States. Schering-Plough's Avimune IB98 product is the market leader with an estimated seventy-nine percent market share, while Intervet competes with its MILDVAC GA-98 product, selling the remaining twenty-one percent in the United States. The acquisition would create a monopoly by combining the only two companies with products on the market.

Live fowl cholera vaccines prevent an infectious bacterial disease in poultry caused by a common pathogenic bacterium, *Pasteurella multocida*. The relevant market for the manufacture, distribution, and sale of live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry in the United States is highly concentrated. Respondent Schering-Plough and Organon BioSciences are two of only three suppliers of live fowl cholera vaccines, and the only providers of a PM-1 strain of the vaccine. Organon BioSciences is the market leader with its CHOLERVAC-PM-1 product, accounting for approximately fifty-three percent of the live fowl cholera vaccines sold in the United States. Schering-Plough is the second leading supplier with its PM-ONEVAC-C and M-NINEVAX products, accounting for thirty-two percent of sales in the market. Together, Schering-Plough and Organon BioSciences account for approximately eighty-five percent of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration levels in the United States in the market for live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry.

MG is a respiratory disease that is transmitted laterally between chickens or through infected eggs. The relevant market for the manufacture, distribution, and sale of live *Mycoplasma gallisepticum* vaccines in the United States is highly concentrated. Respondent Schering-Plough and Organon BioSciences are the two leading suppliers of live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry in the United States. Akzo Nobel is the market leader with its MYCOVAC-L product, while Schering Plough competes with its F-VAX MG. Together, they account for over seventy-two percent of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase theconcentration levels in the United States in the market for live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry.

Entry

Entry into any relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. Entry into any of these markets would require overcoming three major obstacles: lengthy development periods, USDA approval requirements, and customer acceptance. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

Effects

The markets for the Georgia 98 strain of infectious bronchitis, fowl cholera, and MG live vaccines are highly concentrated, with Schering-Plough and Intervet accounting for substantial shares of sales in each of these markets. The proposed acquisition would create a monopolist in the live Georgia 98

vaccine market and would give Schering-Plough shares of approximately eighty-five percent and seventy-two percent in the markets for live fowl cholera vaccine and live MG vaccines, respectively.

The competitive concerns can be characterized as unilateral in nature. Schering-Plough and Organon BioSciences are each other's closest competitors in all of the relevant markets. Consumers have benefitted from the price competition between Schering-Plough and Organon BioSciences. If unremedied, the proposed acquisition would likely cause higher prices and reduce incentives to improve service or product quality, resulting in significant harm to consumers in the U.S. markets for these vaccines.

The Consent Agreement

The proposed Consent Agreement remedies the competitive harm caused by the proposed transaction. Pursuant to the Consent Agreement, Schering-Plough must divest or license all of the assets relating to Schering-Plough's live vaccine for the Georgia 98 strain of infectious bronchitis (Avimune IB98), Intervet's live fowl cholera vaccine (CHOLERVAC-PM-1) and Schering-Plough's live MG vaccine (F VAX-MG)("the assets to be divested"), to the Fort Dodge division of Wyeth, within ten days after the date Schering-Plough acquires Organon BioSciences. The assets to be divested include research and development, customer, supplier and manufacturing contracts and any intellectual property including existing licenses, but excluding trademarks. Fort Dodge plans to bring all manufacturing of the three vaccines in-house to its own manufacturing facilities and to add the three to its own portfolio of poultry vaccines. While Fort Dodge undertakes the process of obtaining USDA regulatory approvals and bringing vaccine production in-house, Schering-Plough will provide Fort Dodge with the vaccines pursuant to a supply and transition services agreement with a term of two years, and an option to extend it another year, individually for each of the three vaccines, if required.

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Wyeth, headquartered in Madison, New Jersey, is a global leader in pharmaceuticals, consumer health care products and animal health care products. In 2006, it had net sales of $20 billion. Wyeth's Fort Dodge Animal Health division offers a broad range of biological and pharmaceutical products for the companion animal, equine, livestock, swine and poultry industries. Significantly, Wyeth already has an established poultry vaccine line comprised of internally developed vaccines as well as several vaccines that it has acquired and transferred to its manufacturing facilities. Fort Dodge has its own distribution network and an experienced sales force with existing relationships with major poultry producers. The three vaccines being divested to Fort Dodge are all established products that have been on the market for at least two years. Fort Dodge has its own manufacturing facilities with excess capacity and intends to bring the manufacturing of all of the products it is acquiring from Schering-Plough in-house. For these reasons, Wyeth is a strong buyer that appears well positioned to replace the competition lost by the acquisition.

If the Commission determines that Wyeth is not an acceptable acquirer of the assets to be divested, the parties must unwind the sale and divest the Products within six months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six months, the Commission may appoint a trustee to divest the Product assets.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Schering-Plough to provide transitional services to enable the Commission-approved acquirer to obtain all of the necessary approvals from the USDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Schering-Plough and Akzo-Nobel.

The Commission has appointed Dr. David A. Espeseth to oversee the implementation of the Order as the Interim Monitor Trustee. Dr. Espeseth retired in 1998 from a career at the USDA, where his last position was as Special Assistant to the Deputy Administrator of Veterinary Services and where he spent the majority of his 37 years regulating veterinary biologic products (vaccines). Today, he is a consultant to animal health companies, assisting with regulatory issues before the USDA and technology transfers. Dr. Espeseth's strengths are his strong regulatory background, his experience overseeing technology transfers, and experience resolving disputes between companies and the USDA.

Dr. Espeseth is an excellent candidate to handle the expected duties and responsibilities of the Interim Monitor Trustee in this matter. He has the requisite capability and applicable knowledge to ensure the proper transfer of the divested assets, oversee the transfer of the relevant technology, monitor the critical manufacturing and supply activities of the Respondent, ensure the Respondent's compliance with the Order and related agreements, respond to Commission needs, and perform other related services as may be required. Accordingly, the Commission has appointed Dr. Espeseth as the Interim Monitor Trustee.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–23291 Filed 11–29–07: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding its inaugural meeting. The meeting is open to the public.

DATES: The meeting will be held on December 17, 2007, from 9 a.m. to 5 p.m., and on December 18, 2007, from 9 a.m. to 5 p.m.

ADDRESSES: The Ronald Reagan Building and International Trade Center, Atrium Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 2004. Phone: 202–312–1300.

FOR FURTHER INFORMATION CONTACT: CAPT Leigh A. Sawyer, DVM, MPH, Executive Director, National Biodefense Science Board, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 200 Independence

Avenue, SW., Room 450G, Washington, DC 20201; 202–205–3815; fax: 202–690–7412; e-mail address: *leigh.sawyer@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) as added by section 402 of the Pandemic and All-Hazards Preparedness Act (Pub. L. 109–417) the Secretary of Health and Human Services is required to establish the National Biodefense Science Board and hold the inaugural meeting of the Board prior to December 19, 2007.

The Board shall provide expert advice and guidance to the Secretary on scientific, technical and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological (CBRN) agents, whether naturally occurring, accidental, or deliberate.

The agenda will include topics related to current and future challenges to national preparedness related to CBRN agents, and will include discussions regarding matters that the Board will consider in greater depth. A tentative schedule will be made available on December 2, 2007 at the NBSB Web site, *http://www.hhs.gov/aspr/omsph/nbsb*.

Any member of the public interested in presenting oral comments at the meeting may notify the Contact person listed on this notice by December 10, 2007. Interested individuals and representatives of an organization may submit a letter of intent and a brief description of the organization represented. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee. All written comments must be received prior to December 10, 2007 and should be sent by e-mail with "NBSB Public Comment" as the subject line or by regular mail to the Contact person listed above. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated Contact person by December 10, 2007.

Dated: November 26, 2007.

RADM W. Craig Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. 07–5885 Filed 11–29–07; 8:45 am]

BILLING CODE 4150–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: November 27, 2007 9 a.m.–3:45 p.m. November 28, 2007 10 a.m.–3 p.m.

Place: Hilton Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC, 202–265–1600.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning and afternoon of the first day the Committee will hear updates from the Department and status reports from its subcommittees as well as a presentation from the Robert Graham Center on harmonizing primary care standards.

On the morning of the second day the Committee will hear an update from the Office of the National Coordinator for Health Information Technology (ONCHIT) followed by Committee actions on selected topics from the subcommittees. In the afternoon there will be a follow up discussion to the ONCHIT presentation and an update from the subcommittees on current and planned activities. There will be a short discussion of future agendas before the meeting adjourns.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

FOR FURTHER INFORMATION CONTACT: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web Site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: November 19, 2007.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (SDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 07–5876 Filed 11–29–07; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Availability of the Bisphenol A Expert Panel Report; Request for Public Comment

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Announcement of report availability and request for comment.

SUMMARY: CERHR announces the availability of the final bisphenol A expert panel report on November 26, 2007, from the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in print from CERHR (see **ADDRESSES** below). The expert panel report is an evaluation of the reproductive and developmental toxicity of bisphenol A conducted by an independent, 12-member expert panel composed of scientists from the public and private sectors convened by CERHR. CERHR invites the submission of public comments on this report (see **SUPPLEMENTARY INFORMATION** below). The expert panel met twice in public session (March 5–7, 2007 and August 6–8, 2007) to review and revise the draft expert panel report and reach conclusions regarding whether exposure to bisphenol A is a hazard to human development or reproduction. The expert panel also identified data gaps and research needs.

DATES: The final bisphenol A expert panel report will be available for public comment on November 26, 2007. Written public comments on this report should be received by January 25, 2008.

ADDRESSES: Comments on the expert panel report and any other correspondence should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, fax: (919) 316–4511, or e-mail: *shelby@niehs.nih.gov*. Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

Bisphenol A (CAS RN: 80–5–07) is a high production volume chemical used in the production of epoxy resins, polyester resins, polysulfone resins, polyacrylate resins, polycarbonate plastics, and flame retardants. Polycarbonate plastics are used in food and drink packaging; resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes. Some polymers used in dental sealants and tooth coatings contain bisphenol A. Exposure to the general population can occur through direct contact to bisphenol A or by exposure to food or drink that has been in contact with a material containing bisphenol A. CERHR selected this chemical for evaluation because of (1) high production volume, (2) widespread human exposure, (3) evidence of reproductive toxicity in laboratory animal studies, and (4) public concern.

The CERHR convened an expert panel on March 5–7, 2007, and on August 6–8, 2007, to review and revise the draft and interim draft expert panel reports and reach conclusions regarding whether exposure to bisphenol A is a hazard to human development or reproduction. The expert panel also identified data gaps and research needs. CERHR solicited public comments on drafts of the expert panel report several times (FR, December 12, 2006, Vol. 71, No. 238 pp. 74534–74536; FR, April 2, 2007, Vol. 72, No. 62 pp. 15695–15696; FR, May 1, 2007, Vol. 72, No. 83 pp. 23833–23834).

Following receipt of public comments on the final bisphenol A expert panel report, CERHR staff will prepare the NTP–CERHR monograph. NTP–CERHR monographs are divided into four major sections: (1) The NTP Brief that provides the NTP's interpretation of the potential for the chemical to cause adverse reproductive and/or developmental effects in exposed humans, (2) a roster of expert panel members, (3) the final expert panel report, and (4) public comments received on that report. The NTP Brief is based on the expert panel report, public comments on that report, public and peer review comments on the draft NTP Brief, and any new, relevant information that becomes available after the expert panel meetings.

Request for Comments

CERHR invites written public comments on the bisphenol A expert panel report. Written comments should be sent to Dr. Michael Shelby (see **ADDRESSES** above). Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any). Any comments received will be posted on the CERHR Web site and included in the NTP CERHR monograph on this chemical. All public comments will be considered by the NTP during preparation of the NTP Brief (see "Background" above).

Background Information on CERHR

The NTP established the CERHR in June 1998 [FR, December 14, 1998 (Vol. 63, No. 239, pp. 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by CERHR in public forums.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. A description of the evaluation process is available on the CERHR Web site under "About CERHR" or in printed copy from CERHR.

Dated: November 15, 2007.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–23234 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amendment to January 26, 2007 Declaration Under the Public Readiness and Emergency Preparedness Act

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), HHS.

ACTION: Amendment (to the January 26, 2007 Declaration under the Public Readiness and Emergency Preparedness Act).

SUMMARY: Declaration pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) to provide targeted liability protections for pandemic countermeasures based on a credible risk that avian influenza viruses spread and evolve into strains capable of causing a pandemic of human influenza.

Amendment: Whereas, the H7 and H9 subtypes of avian influenza viruses are viewed as likely candidates to evolve into an influenza virus strain capable of causing a pandemic of human influenza; and

Whereas, in accordance with section 319F–3(b)(6) of the Public Health Service Act (42 U.S.C. 247d–6d(b)) ("the Act"), I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of these additional medical countermeasures with respect to the category of diseases and population described in sections II and IV of the declaration published in **Federal Register** on February 1, 2007 (72 FR 4710) ("the Original Declaration");

Therefore, pursuant to section 319F–3(b) of the Act, I have determined there is a credible risk that the spread of the H7 and H9 subtypes of avian influenza viruses and resulting disease could in the future constitute a public health emergency. In order to reflect the addition of medical countermeasures specific to the H7 and H9 subtypes of influenza viruses, the Original Declaration is hereby amended as follows:

First "whereas" clause, first sentence, insert "H7 and H9 vaccines" following "(H5N1)."

Second "whereas" clause, first sentence, insert "H7 and H9" following "H5N1" to read "Whereas an H5N1, [H7 and H9] avian influenza viruse[s] may evolve into strain[s] * * *."

In Section I, paragraph 2, first sentence insert "H7 and H9" following "(H5N1)" to read "* * * pandemic countermeasure influenza A (H5N1, [H7 and H9]) vaccine[s]."

In Section I, paragraph 2, third sentence insert "H7 and H9" following "(H5N1)" to read "* * * pandemic countermeasure influenza A (H5N1, [H7 and H9]) vaccine[s] * * *."

In Section II, paragraph 1, insert "or an H7 or H9" following "(H5N1)."

In Section VIII, strike the sentence "This Declaration has not previously been amended." and replace it with: "This is the first amendment to this Declaration. The Original Declaration was published in the **Federal Register** at 72 FR 4710."

All other provisions of the Original declaration remain in full force.

This amendment to the Declaration will be published in the **Federal Register** pursuant to section 319F–3(b)(4) of the Act.

DATES: This notice and the attached declaration are effective November 30, 2007.

FOR FURTHER INFORMATION CONTACT: RADM W. Craig Vanderwage, MD, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

Dated: November 21, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–5884 Filed 11–29–07; 8:45 am]

BILLING CODE 4150–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the renewal of the generic information collection project: "AHRQ Grants Reporting System (GRS)." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by December 31, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

"AHRQ Grants Reporting System (GRS)"

AHRQ has identified the need to establish a systematic method for its grantees to report project progress and important preliminary findings for grants funded by the Agency. The proposed system will address the shortfalls in the current reporting process and establish a consistent and comprehensive grants reporting solution for AHRQ. Currently, AHRQ receives grants continuation applications on an annual basis from all grantees. The progress report, which represents a portion of the annual continuation application, is inadequate because it is too infrequent and does not necessarily capture the information that AHRQ requires to respond to internal and external inquiries. The reporting system will also provide a centralized repository of grants research information that can be used to support initiatives within the Agency's research plans for the future and to support activities such as performance monitoring, budgeting, knowledge transfer as well as strategic planning. AHRQ currently conducts quarterly conference calls with some grantees. The content, frequency, and focus of these calls vary. In some grant programs, the number of participants on these calls may be so large as to prohibit quarterly updates from all participants in order to avoid creating an extremely lengthy conference call and to allow the Agency to address other important issues during these calls. The GRS will support the timely collection of important information related to the life cycle of a grant. This information includes: Significant changes in project goals, methods, study design, sample or subjects, interventions, evaluation, dissemination, training, key personnel, key preliminary findings; significant problems and resolutions; publications and presentations; tools and products; and new collaborations/partnerships with AHRQ grantees or others conducting related research. Collecting this information in a systematic manner will:

- Promote the transfer of critical information more frequently and efficiently which will enhance the Agency's ability to support research designed to improve the outcomes and quality of health care, reduce its costs, and broaden access to effective services.
- Increase the efficiency of the Agency in responding to ad-hoc information requests, Freedom of Information Act requests, and producing responses related to federally mandated programs and regulations.
- Establish a consistent approach throughout the Agency for information collection about grant progress and a systematic basis for oversight and for facilitating potential collaboration with or among grantees.
- Decrease the inconvenience and burden on grantees of unanticipated adhoc requests for information by the Agency in response to particular (one-time) internal and external requests for information.

This proposed information collection was previously published in the **Federal Register** on September 17th, 2007 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. This project was previously approved by OMB on November 10th, 2004. The OMB control number is 0935–0122 and will expire on November 30th, 2007.

Data Confidentiality Provisions

Confidential commercial information will be protected in accordance with 18 U.S.C. 1905. Information about Principal Investigators will be maintained in accordance with the Privacy Act, 5 U.S.C. 552a. Also, individuals and organizations will be assured of the confidentiality of their data under section 934(c) of the Healthcare Research and Quality Act of 1999. The submitted reports will be printed and included in the official file for each grant. All of these files will be retained according to existing agency policies and procedures and archived as required. The data will be collected using a Web based reporting interface developed specifically for the purpose of collecting information quarterly. To reduce burden and to the extent possible, these forms will be prepopulated with reoccurring information needed to specifically identify the institution, project, principal investigator, and other similar information.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Data entry into GRS	500	3	10/60	250
Total	500	na	na	250

EXHIBIT 2.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Data entry into GRS	500	250	$30.00	$7,500
Total	500	250	na	7,500

*Based upon the average wages, "National Compensation Survey: Occupational Wages in the United States, May 2006," U.S. Department of Labor, Bureau of Labor Statistics.

This information collection will not impose a cost burden on the respondents beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Annual Costs to the Federal Government

The annual cost to the government is $100,000 for licensing, support and maintenance.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 26, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–5886 Filed 11–29–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0323]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 31, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0045. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Comment Request; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—(OMB Control Number 0910–0045—Extension)

Under section 510 of the Federal Food, Drug, and Cosmetic Act (the act), (21 U.S.C. 360), FDA is authorized to establish a system for registration of producers of drugs and for listing of drugs in commercial distribution. To implement section 510 of the act, FDA issued part 207 (21 CFR part 207). Under current[1] 21 CFR 207.20,

[1] This notice requests comments on the information collection in current part 207. In the **Federal Register** of August 29, 2006 (71 FR 51276), FDA proposed to revise part 207. The proposed revisions would reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list, and describes when and how to register and list and what information must be submitted for registration and listing. In addition, the proposal would make certain changes to the National Drug Code (NDC) system and would require the appropriate NDC number to appear on the labels for drugs subject to the listing requirements. The proposed regulations generally also require the electronic submission of all registration and most listing information. The August 29, 2006, proposed rule requested comments on the information collection for revised part 207. When the proposal is finalized, the

Continued

manufacturers, repackers, and relabelers that engage in the manufacture, preparation, propagation, compounding, or processing of human or veterinary drugs and biological products, including bulk drug substances and bulk drug substances for prescription compounding, and drug premixes as well as finished dosage forms, whether prescription or over-the-counter, are required to register their establishment. In addition, manufacturers, repackers, and relabelers are required to submit a listing of every drug or biological product in commercial distribution. Owners or operators of establishments that distribute, under their own label or trade name, a drug product manufactured by a registered establishment are not required either to register or list. However, distributors may elect to submit drug listing information in lieu of the registered establishment that manufactures the drug product. Foreign drug establishments must also comply with the establishment registration and product listing requirements if they import or offer for import their products into the United States.

Under current §§ 207.21 and 207.22, establishments, both domestic and foreign, must register with FDA by submitting Form FDA–2656 (Registration of Drug Establishment) within 5 days after beginning the manufacture of drugs or biologicals, or within 5 days after the submission of a drug application or biological license application. In addition, establishments must register annually by returning, within 30 days of receipt from FDA, Form FDA–2656e (Annual Update of Drug Establishment) (Note: This form is no longer mailed to registrants by FDA; updating registration information is estimated in the table in this document by the information submitted annually on Form FDA–2656). Changes in individual ownership, corporate or partnership structure, location, or drug-handling activity must be submitted as amendments to registration under current § 207.26 within 5 days of such changes. Distributors that elect to submit drug listing information must submit a Form FDA–2656 to FDA and a copy of the completed form to the registered establishment that manufactured the product to obtain a labeler code. Establishments must, within 5 days of beginning the manufacture of drugs or biologicals, submit to FDA a listing for every drug or biological product in commercial distribution at that time by using Form FDA–2657 (Drug Product Listing). Private label distributors may elect to submit to FDA a listing of every drug product they place in commercial distribution. Registered establishments must submit to FDA drug product listing for those private label distributors who do not elect to submit listing information by using Form FDA–2658 (Registered Establishments' Report of Private Label Distributors).

Under current § 207.25, product listing information submitted to FDA by domestic and foreign manufacturers must, depending on the type of product being listed, include any new drug application number or biological establishment license number, copies of current labeling and a sampling of advertisements, a quantitative listing of the active ingredient for each drug or biological product not subject to an approved application or license, the National Drug Code number, and any drug imprinting information.

In addition to the product listing information required on Form FDA–2657, FDA may also require, under current § 207.31, a copy of all advertisements and a quantitative listing of all ingredients for each listed drug or biological product not subject to an approved application or license; the basis for a determination, by the establishment, that a listed drug or biological product is not subject to marketing or licensing approval requirements; and a list of certain drugs or biological products containing a particular ingredient. FDA may also request, but not require, the submission of a qualitative listing of the inactive ingredients for all listed drugs or biological products, and a quantitative listing of the active ingredients for all listed drugs or biological products subject to an approved application or license.

Under current § 207.30, establishments must update their product listing information by using Form FDA–2657 and/or Form FDA–2658 every June and December or, at the discretion of the establishment, when any change occurs. These updates must include the following information: (1) A listing of all drug or biological products introduced for commercial distribution that have not been included in any previously submitted list; (2) all drug or biological products formerly listed for which commercial distribution has been discontinued; (3) all drug or biological products for which a notice of discontinuance was submitted and for which commercial distribution has been resumed; and (4) any material change in any information previously submitted. No update is required if no changes have occurred since the previously submitted list.

In the **Federal Register** of August 24, 2007 (72 FR 48656), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the annual information collection burden for current part 207 as follows:

Form	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours Per Responses	Total Hours
(1) *Form FDA–2656—Registration of Drug Establishment* (New registrations, including new labeler codes for private label distributors)	39	14.72	574	2.50	1,435
(2) *Form FDA–2656—Annual Update of Drug Establishment* (Update of registration information)	3,256	2.99	9,763	2.50	24,407.50
(3) *Form FDA–2657—Drug Product Listing* (New drug listings)	1,567	6.57	10,301	2.50	25,752.50
(4) *Form FDA–2658—Registered Establishments' Report of Private Label Distributors* (New listings for private label distributor drugs)	146	10.06	1,469	2.50	3,672.50

information collection for revised part 207 will replace the information collection in this notice.

Form	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours Per Responses	Total Hours
(5) *Form FDA–2657 and Form FDA–2658*—(June and December updates of all listing information)	1,677	11.21	18,797	2.50	46,992.50
Total					102,260

Dated: November 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23275 Filed 11–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0277]

Food Labeling: Use of Symbols to Communicate Nutrition Information, Consideration of Consumer Studies and Nutritional Criteria; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to January 15, 2008, the comment period for the notice of public hearing that published in the **Federal Register** of July 20, 2007. In the notice of public hearing, FDA requested comments on the use of symbols to communicate nutrition information on food labels. The agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: Submit written or electronic comments by January 15, 2008.

ADDRESSES: You may submit comments, identified by Docket No. 2007N–0277, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this document under *Electronic Submissions* .

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Juanita Yates, Center for Food Safety and Applied Nutrition (HFS–555), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1731.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 20, 2007 (72 FR 39815), FDA published a notice of public hearing with a 115-day comment period to request comments on the use of symbols to communicate nutrition information on food labels, specifically, the issues and questions presented in section III of the notice (see 72 FR 39815 at 39816). Comments will inform FDA's consideration of the use of symbols to communicate nutrition information on food labels.

The agency has received a request for a 60-day extension of the comment period for the notice of public hearing. The request conveyed concern that the comment period, which closed 60 days subsequent to the public hearing held September 10 and 11, 2007, did not allow sufficient time to develop a meaningful or thoughtful response to the request for comments on the issues and questions presented in section III of the notice.

FDA has considered the request and is reopening the comment period for the notice of public hearing, which closed November 12, 2007, for 60 days, until January 15, 2008. The agency believes that reopening the comment period for 60 days allows adequate time for interested persons to submit comments on the issues and questions presented in section III of the notice without significantly delaying the agency's consideration of the use of symbols to communicate nutrition information on food labels.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: November 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23211 Filed 11–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0019]

Guidance for Industry and Food and Drug Administration Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle" dated November 2007. The guidance document serves as the special control for the automated blood cell separator device operating on a centrifugal or filtration separation principle intended for the routine collection of blood and blood components, and describes a means by which the device may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify the automated blood cell separator device operating by centrifugal separation principle into class II (special controls).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle" dated November 2007. This special controls guidance identifies the relevant classification regulation that provides a description of the applicable automated blood cell separator device. In addition, other sections of this special control guidance list the risks to health identified by FDA and describe measures that, if followed by manufacturers and combined with general controls, will ordinarily address the risks associated with these automated blood cell separators.

In the **Federal Register** of March 10, 2005 (70 FR 11990), FDA announced the availability of the draft guidance of the same title. FDA received one comment on the proposed rule and draft guidance and that comment was considered as the rule and guidance were finalized. The guidance announced in this notice finalizes the draft guidance dated January 2005.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0594.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23281 Filed 11–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Pretesting of NIAID's HIV Vaccine Research Communications Messages

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Allergy and Infectious Diseases (NIAID), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 28, 2007, page 49282 and allowed 60-days for public comment. One public comment was received and was addressed in the OMB request. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection: Title: Pretesting of NIAID's HIV Vaccine Research Communications Messages. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for clearance to pretest messages, materials and program activities produced for the NIAID HIV Vaccine Research Education Initiative (NHVREI). The primary objectives of the pretests are to (1) assess audience knowledge, attitudes, behaviors and other characteristics for the planning/development of health messages, education products, communication strategies, and public information programs; and (2) pretest these health messages, products, strategies, and program components while they are in

developmental form to assess audience comprehension, reactions, and perceptions. The information obtained from audience research and pretesting results in more effective messages, materials, and programmatic strategies. By maximizing the effectiveness of these messages and strategies for reaching targeted audiences, the frequency with which publications, products, and programs need to be modified is reduced. *Frequency of Response:* On occasion. *Affected Public:* Individuals. *Type of Respondents:* Adults at risk for HIV/AIDS, particularly those who are Black/African-American, Hispanic/Latino, or men who have sex with men; healthcare providers; representatives of organizations disseminating HIV-related messages or materials. The annual reporting burden is shown in the table below. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
At-risk Adults	3,374	1	.3422	1,155
Healthcare providers	50	1	.75	37.5
Organization Gatekeepers	75	1	.50	37.5
Total	3,499			1,230

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Katharine Kripke, Assistant Director, Vaccine Research Program, Division of AIDS, NIAID, NIH, 6700B Rockledge Dr., Bethesda, MD 20892–7628, or call non-toll-free number 301–402–0846, or E-mail your request, including your address to *kripkek@niaid.nih.gov.*

Comments Due Date: 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: November 7, 2007.

John J. McGowan,

Deputy Director for Science Management NIAID.

[FR Doc. E7–23183 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Process Evaluation of the Global Health Research Initiative Program for New Foreign Investigators (GRIP)

SUMMARY: In compliance with the requirement of section 3506©(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Fogarty International Center (FIC), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Process evaluation of the Global Health Research Initiative Program for New Foreign Investigators (GRIP). *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This study will assess the outputs of the Global Health Research Initiative Program for New Foreign Investigators (GRIP) to date, assess the programs alignment with new strategic goals of the FIC, and identify potential directions for program enhancement. The primary objectives of the study are to determine if GRIP awards (1) promote productive re-entry of NIH-trained foreign investigators into their home countries, (2) increase the research capacity of the international scientists and institution, and (3) stimulate research on a wide variety of high priority health-related issues. The findings will provide valuable information concerning: (1) Specific research advances attributable to GRIP support; (2) specific capacity and career enhancing advances that are attributable to GRIP; (3) policy implications for GRIP at the program level based on survey responses, such as successes and challenges of the program's implementation, the GRIP support mechanism, etc. *Frequency of Response:* Once. *Affected Public:* None. *Type of Respondents:* Foreign researchers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 101; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.50; and *Estimated Total Annual Burden Hours Requested:* 50.5. The annualized cost to respondents is estimated at: $656.50. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Table 1 and Table 2 respectively present data concerning the burden hours and cost burdens for this data collection.

TABLE 1.—ANNUALIZED ESTIMATE OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time for response (hr)	Total hour burden *
GRIP Awardees	101	1	0.50	50.5
Total	101	1	0.50	50.5

* Total Burden = N Respondents × Response Frequency × minutes to complete/60.

TABLE 2.—ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Frequency of response	Approximate hourly wage rate/hr	Total respondent cost *
GRIP Awardees	101	1	$13	656.50
Total	101	1	13	656.50

* Total Respondent Cost = N Respondents × Response Frequency × minutes to complete/60 × hourly rate.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Linda Kupfer, Fogarty International Center, National Institutes of Health, 16 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–496–3288, or e-mail your request, including your address to: *kupferl@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: November 20, 2007.

Timothy Tosten,

Executive Officer, FIC, National Institutes of Health.

[FR Doc. E7–23235 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Family of Small Molecules for Selective Inhibition of Wip1 Phosphatase

Description of Technology: The Wip1 phosphatase acts on proteins containing a particular phosphorylated amino acid sequence. Studies have shown that Wip1 is overexpressed in a number of human cancers, including breast cancer, neuroblastoma and ovarian cancer. Wip1 activity has also been shown to have a suppressive effect on the tumor suppressor p53. This suggested that inhibition of Wip1 could be of therapeutic value in the treatment of cancer.

NIH inventors have developed small molecules that simulate the structure of the amino acid sequence that Wip1 recognizes. The structure of the small molecules allows for specific targeting to Wip1. These small molecules have the ability to significantly inhibit Wip1 phosphatase activity at the micromolar level. As a result, these small molecules can be used in the design of therapeutics for cancers that overexpress Wip1.

Applications: Treatment of cancer, including but not limited to breast cancer, ovarian cancer and neuroblastoma.

Can be used either alone or in combination with other known anti-cancer therapeutics.

Advantages: Structure of the inhibitor allows targeting of Wip1 without inhibition of related phosphatases and their biological processes, possibly leading to fewer undesired effects during treatment.

Small molecules are stable and have the ability to effectively penetrate cells.

Can be applied to many different types of cancer.

Benefits: The current lack of Wip1 inhibitors means that development of the small molecules could lead to the occupation of a significant position in the cancer therapeutic market.

The successful inhibition of a new target in cancer therapy could provide far-reaching social benefit in the treatment of multiple cancers.

Inventors: Ettore Appella *et al.* (NCI).

U.S. Patent Status: U.S. Patent Application No. 60/969,258 (HHS Reference No. E–302–2007/0–US–01).

Licensing Contact: David A. Lambertson, Ph.D.; Phone: (301) 435–4632; Fax: (301) 042–0220; E-mail: *lambertsond@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute's Laboratory of Cell Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize therapeutics for cancers that overexpress Wip1. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Selenocysteine Mediated Hybrid Antibody Molecules

Description of Technology: Available for licensing is a new class of hybrid molecules composed of an antibody, or antibody fragment, and a small synthetic molecule (such as a small molecule inhibitor, or cytotoxic compound). These biological and chemical components are covalently linked at an engineered selenocysteine near the C-terminus of the antibody, or antibody fragment. Through this covalent linkage, the chemical and the biological component can acquire properties of one another. For example, the synthetic molecule acquires antibody properties such as circulatory half-life, effector functions, and ability to interfere with protein interactions whereas the antibody, or antibody fragment, acquires properties of the small synthetic molecule such as specificity, affinity, and stability to bind to targets that are sterically inaccessible to immunoglobulins. The technology can also be used to equip an antibody, or antibody fragment, with a small synthetic molecule that enhances target destruction or imaging capabilities through site-selective biotinylation, PEGylation, addition of an imaging agent, or addition of a cytotoxic agent such as a chemotherapeutic drug or a chelate for radioisotope labeling. The hybrid antibody molecules can be engineered with a variety of small synthetic molecules, and the combination of immunogenic properties and those of the small synthetic molecules results in compounds with powerful target destruction or imaging capabilities. This technology could be applied towards the targeted delivery of small synthetic molecules to various cell surface receptors, and may have applicability as a prevention, diagnosis, or therapy for numerous disease states.

Applications: Potent novel compositions that retain immunogenic properties and those of small synthetic molecules that can be produced at a large scale; Method to prevent, diagnose, and treat cancer, infectious diseases and autoimmune diseases.

Market: Monoclonal antibody market is projected to exceed $30 billion by 2010; Revenue from antibodies for therapeutics and diagnostic uses are expected to grow at an average annual growth rate of 11.5%.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Christoph Rader *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 60/909,665 filed 02 Apr 2007 (HHS Reference No. E–146–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Experimental Transplantation and Immunology Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Selenocysteine Mediated Hybrid Antibody Molecules. Please contact Dr. Christoph Rader at (301) 451–2235 or *raderc@mail.nih.gov* for more information.

SLCO1B3 Genotyping to Predict a Survival Prognosis of Prostate Cancer

Description of Technology: Steroid hormones have been implicated in playing a fundamental role in the pathogenesis of prostate cancer. Polymorphisms in the genes that code for enzymes or hormones involved in androgen regulatory pathway are proposed to influence an individual's risk for developing prostate cancer. Since many membrane transporters are modulators of steroid hormones absorption and tissue distribution, genetic polymorphisms in genes encoding these transporters may account for the risk of prostate cancer and the predicting of survival. The OATP1B3 (formerly OATP8) steroid uptake transporter is overexpressed in prostate cancer, and polymorphisms in *SLCO1B3* have been associated with altered testosterone uptake, and also an increased prostate cancer risk.

This invention identifies two polymorphic genetic markers in the *SLCO1B3* (formerly *SLC21A8*) gene, called 334T>G and 699G>A, that can be measured in genomic DNA obtained from a blood sample to predict survival from diagnosis of prostate cancer in that individual patient. This genetic profiling result has profound clinical applications in diagnosis for each individual patient and ultimate treatment regimen. Specifically, the inventors have provided a correlation between clinical outcome of SLCO1B3 genotype with median survival of androgen independent prostate cancer. They have also shown that the genotype is predictive of testosterone uptake through the OATP1B3 transporter, and this information is useful to inform clinical decisions regarding antiandrogen therapy.

Advantages and Applications: *SLCO1B3* genotyping can be used in combination on a gene chip with several polymorphisms known to predict survival of prostate cancer patients. Thus the OATP1B3 polymorphism would be one genetic marker in a series of other markers that would be used to inform clinical decisions.

SLCO1B3 upregulation can be used as a prognostic tool.

Development Status: Initial experiments have been performed with clinical samples from patients with prostate cancer.

Inventors: William D. Figg et al. (NCI).

Patent Status: U.S. Provisional Application No. 60/879,503 filed 08 Jan 2007 (HHS Reference No. E–083–2007/0–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Mojdeh Bahar, J.D.; 301/435–2950; *baharm@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute's Medical Oncology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of the *SLCO1B3* genotyping to inform clinical decisions regarding drug treatment, or prognosis of prostate cancer. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A New Method for Determining Level of Immunosuppression in Humans

Description of Technology: These inventions describe a method of determining the level of immunosuppression in a human subject by determining the level of expression of at least one selected T-Cell Receptor subunit protein, or protein in the T lymphocyte signal transduction pathway, and comparing the level to that found in healthy individuals.

Applications: The method can be used to identify candidates for autologous adoptive immunotherapy

and for identification of agents which cause or reverse immunosuppression.

Development Status: Pre-clinical stage.

Inventors: Augusto C. Ochoa et al. (NCI).

Patent Status: U.S. Patent No. 5,583,002 issued 10 Dec 1996 (HHS Reference No. E–231–1995/1–US–01);

U.S. Patent No. 5,556,763 issued 17 Sep 1996 (HHS Reference No. E–231–1995/3–US–01);

U.S. Patent No. 5,889,143 issued 10 Dec 1996 (HHS Reference No. E–231–1995/3–US–02);

U.S. Patent Application No. 09/280,655 filed 29 Mar 1999 (HHS Reference No. E–231–1995/3–US–03);

U.S. Patent No. 5,658,744 issued 19 Aug 1997 (HHS Reference No. E–232–1995/0–US–01);

U.S. Patent No. 5,965,366 issued 12 Dec 1999 (HHS Reference No. E–232–1995/1–US–01); and any foreign equivalent patents and patent applications.

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov.*

Dated: November 14, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–23193 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Monoclonal Antibody to a Specific Peptide–MHC Class II Complex

Description of Invention: T lymphocytes play an important role in the immune system by recognizing foreign protein motifs on cells. T lymphocytes are stimulated to recognize these motifs through their interactions with peptide-MHC complexes (pMHC). Thus, studying pMHC is an important aspect of understanding how the immune system works, particularly with regard to the development of vaccines. Unfortunately, the detection of pMHC is largely dependent on indirect assays, due to the difficulty of producing antibodies for specific pMHC.

This invention regards the development of hybridomas (C4H3) for the production of antibodies that are highly specific for a particular pMHC complex consisting of hen egg lysozyme peptide 46-61 (HEL) and the I-A^k MHC class II molecule. These antibodies can be used for a myriad of purposes which include studying how cells form pMHC.

Applications: Discovery of methods for antigen delivery in the development of vaccines.

Quantitation and distribution of pMHC complexes on cells.

Study antigen processing in experimental immunological research systems.

Advantages: High specificity for the pMHC complex of HEL-I-A^k MHC class II molecule.

HEL-I-A^k is widely used in experimental immunological research systems, giving the hybridoma and antibodies great applicability.

Inventors: Ronald N. Germain *et al.* (NIAID).

Publications: 1. G Zhong *et al.* Production, specificity, and functionality of monoclonal antibodies to specific peptide-major histocompatibility complex class II complexes formed by processing of exogenous protein. Proc Natl Acad Sci U S A. 1997 Dec 9; 94(25):13856–13861.

2. A Porgador *et al.* Localization, quantitation, and in situ detection of specific peptide-MHC class I complexes using a monoclonal antibody. Immunity. 1997 Jun; 6(6):715–726.

Patent Status: HHS Reference No. E–021–2008/0–Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Lymphocyte Biology Section, Laboratory of Immunology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize monoclonal antibody C4H3, specific for HEL (46-61) bound to the MHC class II molecule I-A^k. Please contact Ronald N. Germain, M.D., Ph.D., at *rgermain@nih.gov* for more information.

Bifunctional Compounds that Bind to Hormone Receptors

Description of Technology: The development and progression of prostate cancer is dependent on the androgen receptor (AR), a ligand-dependent transcription factor. In the inactive form AR resides in the cytosolic region of the cell and when activated, AR is imported into the nucleus. Initial hormonal therapy for prostate cancer involves lowering serum levels of testosterone to shut down AR activity. Despite initial patient responses to testosterone-depleting therapies, prostate cancer becomes refractory to hormonal therapy. Notably, AR is reactivated in hormone-refractory prostate cancer and reinstates its proliferative and survival activity.

Available for licensing is a novel chemical compound which is bifunctional and binds to AR. This compound is comprised of tubulin-binding and steroid receptor-binding moieties. This compound is designed to antagonize AR function in a nonclassical manner by several mechanisms and kills hormone-refractory prostate cells better than both functional moieties. This compound is a first-in-class of bifunctional steroid receptor binding agents that can antagonize steroid receptors in a variety of hormone-dependent diseases, such as breast and prostate cancer.

Applications: Therapeutic compounds that selectively target steroid receptor-expressing cancer cells resulting in decreased toxicity.

Method to treat hormone resistant prostate cancer and potentially other steroid receptor dependent diseases such as breast cancer.

Market: Prostate cancer is the second most common type of cancer among men, wherein one in six men will be diagnosed with prostate cancer.

An estimated 218,890 new cases of prostate cancer and 27,050 deaths due to prostate cancer in the United States in 2007.

An estimated 180,510 new cases of breast cancer and 40,060 deaths due to breast cancer in the United States in 2007.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Nima Sharifi *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 60/958,351 filed 03 Jul 2007 (HHS Reference No. E–163–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The Medical Oncology Branch, National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize—treatments of resistant prostate cancer. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Clinically Proven Therapeutic Treatment and Diagnostic Tool for Mesothelin Expressing Cancers: A Novel Recombinant Immunotoxin SS1P (anti-mesothelin dsFv–PE38)

Description of Technology: Mesothelin is a glycoprotein, whose expression has been largely restricted to mesothelial cells in normal tissues. Mesothelin has been shown to be expressed in several cancers including mesothelioma, lung cancer, pancreatic cancers, gastric cancers and ovarian cancers, and has the potential of being used as a novel target for the development of new treatments.

The technology relates to the SSIP immunotoxin that can be used to kill cells expressing mesothelin on their surfaces, such as mesothelioma, ovarian cancer, lung cancer, ovarian cancer and stomach cancer. Additionally, it can be used for the detection of mesothelin expressing cells present in a biological sample.

The SSIP immunotoxin is a recombinant immunotoxin generated by the fusion of a high affinity anti-mesothelin Fv (SS1) with a 38 kDa portion of *Pseudomonas Exotoxin* A (PE38).

Applications: SS1P can be used as a therapy for mesothelin expressing cancers.

The immunotoxin can be used as a stand alone treatment and in combination with standard chemotherapy.

Advantage: SS1P immunotoxin is available for use and has been successfully tested clinically for the treatment of mesothelioma and ovarian cancer with low side effects.

Development Status: Phase 1 studies have been completed for mesothelin expressing cancers such as mesothelioma, ovarian cancer and pancreatic cancer.

Phase 2 studies to begin shortly for combination therapy using SS1P and standard chemotherapy.

Inventors: Ira Pastan (NCI) *et al.*

Relevant Publications: 1. R Hassan *et al.* Phase I study of SS1P, a recombinant anti-mesothelin immunotoxin given as a bolus I.V. infusion to patients with mesothelin-expressing mesothelioma, ovarian, and pancreatic cancers. Clin Cancer Res. 2007 Sep 1;13 (17):5144–5149.

2. Y Zhang *et al.* Synergistic antitumor activity of taxol and immunotoxin SS1P in tumor-bearing mice. Clin Cancer Res. 2006 Aug 1;12(15):4695–4701.

Patent Status: U.S. Patent No. 7,081,518 issued 25 Jul 2006, entitled "Anti-Mesothelin Antibodies Having High Binding Affinity" (HHS Reference No. E–139–1999/0–US–07)

Related Intellectual Property: 1. U.S. Patent No. 4,892,827 entitled "Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin with Low Side Effects" [HHS Ref. No. E–385–1986/0];

2. U.S. Patent Nos. 6,051,405, 5,863,745, and 5,696,237 "Recombinant Antibody-Toxin Fusion Protein" [HHS Ref. No. E–135–1989/0];

3. U.S. Patents 5,747,654, 6,147,203, and 6,558,672 entitled "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity" [HHS Ref. No. E–163–1993/0];

4. U.S. Patent No. 6,153,430, and U.S. Patent Application No. 09/684,599 "Nucleic Acid Encoding Mesothelin, a Differentiation Antigen Present on Mesothelium, Mesotheliomas and Ovarian Cancers" [HHS Ref. No. E–002–1996/0];

5. U.S. Patent 6,083,502 entitled "Mesothelium Antigen and Methods and Kits for Targeting It" [HHS Ref. No. E–002–1996/1];

6. U.S. Patent Application 09/581,345: "Antibodies, Including Fv Molecules, and Immunoconjugates Having High Binding Affinity for Mesothelin and Methods for Their Use" [HHS Ref. No. E–021–1998/0];

7. PCT Application No. PCT/US01/18503, "Pegylation of Linkers Improves Antitumor Activity and Reduces Toxicity of Immunoconjugates" [HHS Ref. No. E–216–2000/2];

8. PCT Application No. PCT/US2006/018502 and U.S. Patent Application No. 60/681,104, entitled "Anti-Mesothelin Antibodies Useful For Immunological Assays" [HHS Ref. No. E–015–2005/0–US–01]; and

9. Any related foreign filed national stage applications claiming priority to such patent applications and patents listed above.

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Laboratory of Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, immunotoxin SS1P. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: November 16, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–23194 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 10–11, 2008.

Time: 7 a.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Jerry Roberts, PhD., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635

Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892–9306, 301 402–0838, *jr39m@nih.gov*.

Name of Committee: Center for Inherited Disease Research Access Committee, CIDR Access Committee B.

Date: January 11, 2008.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Rudy Pozzatti, PhD., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5883 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, B/START Review.

Date: December 14, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institutes on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, B/START Review.

Date: December 14, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: November 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5878 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, NIH Pathway to Independence Awards (K99/R00).

Date: December 6–7, 2007.

Time: 7 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Meredith D. Temple-O'Connor, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5879 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immune Pathogenesis in Chronic HIV Infection.

Date: December 17, 2007.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3133, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Peter R. Jackson, PhD, Chief, ACERB, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, DHHS, 6700–B Rockledge Drive, Room 3140, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pjackson@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5882 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG RUS F 51 Nephrology Applications.

Date: December 10–11, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ryan G. Morris, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5877 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of FDA Approved HIV Resistance Diagnosis Kit

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in U.S. Patent No. 5,714,313, issued February 03, 1998, entitled "Simple Method For Detecting Inhibitors Of Retroviral Replication" (HHS Ref. E–054–1991/1–US–01) (*Inventors:* David Garfinkel, Joan Curcio, Dwight Nissley and Jeffrey Strathern) (NCI), to AmiKana.BioLogics (Hereafter AmiKana), having a place of business in France. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before January 29, 2008 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *hus@od.nih.gov*; Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The subject technology discloses a DNA vector comprised of a selectable marker gene inserted into a retrotransposon for use in identifying and selecting cells in which retrotransposition has occurred. This novel method uses a retrotransposon comprised of a retroviral reverse transcriptase/RNAse H gene domain, which creates a unique restriction enzyme site wherever reverse transcription occurs. This novel system offers a means of identifying compounds or agents that can inhibit retrotransposition or retroviral replication. Previous methods developed to detect retrotransposition have not been able to accurately identify DNA in which reverse transcription has occurred. Certain types of retrotransposition are similar to retroviral replication. Thus, this method is applicable to identifying antiretroviral compounds as well as inhibitors of retrotransposition.

The field of use may be limited to the development of FDA approved HIV resistance diagnosis kit through the combination of the subject technology and AmiKana's proprietary yeast based HIV protease phenotyping procedure (Patent Publication No. WO2006000693).

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. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. 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.

Dated: November 19, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–23191 Filed 11–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2007–0013]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The National Advisory Council (NAC) will be holding a teleconference meeting for purposes of discussing governance and standard operating procedures. The teleconference meeting will be open to the public.

DATES: *Meeting Date:* Tuesday, December 18, 2007, 1 p.m.–2 p.m. e.s.t. *Comment Date:* Written comments must be received by December 14, 2007.

ADDRESSES: The meeting will be held via teleconference only. Members of the public who wish to obtain the call-in number, access code, and other information for the public teleconference may contact Alyson Price as listed in the **FOR FURTHER INFORMATION CONTACT** section by December 14, 2007.

All written comments must be received by December 14, 2007. All submissions received must include the docket number FEMA–2007–0013 and may be submitted by any one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow instructions for submitting comments on the Web site.

E-mail: FEMA-RULES@dhs.gov. Include docket number in the subject line of the message.

Facsimile: (866) 466–5370.

Mail: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472.

Hand Delivery/Courier: National Advisory Council, DFO c/o Rules Docket Clerk, Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the docket number: FEMA–2007–0013. Comments received will also be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may want to read the Privacy Act Notice located on the Privacy and Use Notice link on the Administration Navigation Bar of the Web site *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received by the National Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472, telephone 202–646–3746, fax 202–646–3061, and e-mail *Alyson.Price@dhs.gov.* The NAC's Web site can be located at: *http://www.fema.gov/about/nac/.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The NAC will be holding a teleconference meeting for purposes of discussing governance and standard operating procedures. This meeting is open to the public. Although members of the public will not be allowed to comment orally during the meeting, they may file a written statement with the NAC before the date of the meeting. The NAC's Web site can be located at: *http://www.fema.gov/about/nac/.*

Agenda of Council Meeting, December 18, 2007

The tentative agenda will include discussions on governance and standard operating procedures for the NAC. A final agenda will be available on the NAC Web site at *http://www.fema.gov/about/nac/.*

Dated: November 26, 2007.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–23216 Filed 11–29–07; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125-N–48]

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.

DATES: *Effective Date:* November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 21, 2007.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–23082 Filed 11–28–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary, National Invasive Species Council; Request for Nominations for the Invasive Species Advisory Committee

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be postmarked by January 14, 2008.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW., Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce, and is charged with providing coordination, planning and leadership regarding invasive species issues. Pursuant to the Executive Order, the Council developed a National Invasive Species Management Plan, which is available on the Web at *http://www.invasivespecies.gov.* The Council is responsible for effective implementation of the Plan including any revisions of the Plan, and also coordinates Federal agency activities concerning invasive species; encourages

planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to three (3) times per year.

Terms for many of the current members of the ISAC will expire in June 2008. After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: weed science, fisheries science, rangeland management, forest science, entomology, nematology, plant pathology, veterinary medicine, the broad range of farming or agricultural practices, biodiversity issues, applicable laws and regulations relevant to invasive species policy, risk assessment, biological control of invasive species, public health/epidemiology, industry activities, international affairs or trade, tribal or State government interests, environmental education, ecosystem monitoring, natural resource database design and Integration, and internet-based management of conservation issues.

Prospective nominees should also have practical experience in one or more of the following areas: representing sectors of the national economy that are significantly threatened by biological invasions (e.g., agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (e.g., shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than two (2) consecutive terms. All terms will be limited to three (3) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Note: Employees of the Federal Government are not eligible for nomination or appointment to ISAC.

Submitting Nominations

Nominations should be typed and must include each of the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.

2. A resume or curriculum vitae.

3. At least two (2) letters of reference.

Incomplete nominations (missing one or more of the items described above) will not be considered. Nominations should be postmarked no later than January 14, 2008, to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW., Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations to ensure that recommendations of the ISAC take into account the needs of the diverse groups served.

Dated: November 26, 2007.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E7–23213 Filed 11–29–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0023; Migratory Bird Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. We are combining three surveys in this ICR because the surveys are interrelated and/or dependent upon each other:

(1) Migratory Bird Hunter Surveys, currently approved under OMB Control No. 1018–0015, which expires February 28, 2008.

(2) Parts Collection Survey, also approved under OMB Control No. 1018–0015.

(3) Sandhill Crane Harvest Survey, currently approved under OMB Control No. 1018–0023, which expires November 30, 2007.

We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before December 31, 2007.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395–6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0023.

Title: Migratory Bird Surveys

Service Form Number(s): 3–165, 3–165A, 3–165B, 3–165C, 3–165D, 3–165E and 3–2056J-N.

Type of Request: Revision of currently approved collections.

Affected Public: States and migratory game bird hunters.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasi

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Migratory Bird Harvest Information Program	49	686	185 hours	126,910
Migratory Bird Hunter Survey	85,000	85,000	4.3 minutes	6,100
Parts Collection Survey	13,500	134,600	4.7 minutes	10,436
Sandhill Crane Harvest Survey	7,500	7,500	5 minutes	625
Totals	106,049	227,786		144,071

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) setting hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under the Migratory Bird Harvest Program, State licensing authorities collect the name and address information needed to provide a sample frame of all licensed migratory bird hunters. Since Federal regulations require that the States collect this information, we are including the associated burden in our approval request to OMB.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program, under which each State annually provides a list of all migratory bird hunters in the State. We randomly select migratory bird hunters; send them either a waterfowl questionnaire, a dove and band-tailed pigeon questionnaire, a woodcock questionnaire, or a snipe, rail, gallinule and coot questionnaire; and ask them to report their harvest of those species. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest of those species.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard if they are willing to participate in the Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck, goose, or coot they harvest, or a wing from each woodcock, band-tailed pigeon, snipe, rail, or gallinule they harvest. We use the wings and tail feathers to identify the species, sex, and age of the harvested sample. We also ask respondents to report on the envelope the date and location of harvest for each bird. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping the population at the desired level.

We are also seeking approval to add a mourning dove wing collection to the Parts Collection Survey on an experimental basis. We will use the wings to identify the age of each sample, thereby providing estimates of annual mourning dove productivity at the management unit level. Those estimates of annual productivity are needed to improve the mourning dove population models that we have developed for each management unit. We will compare the results and costs of our experimental mail survey with results and costs of mourning dove wing collection methods that are currently employed by some, but not all, States that have dove hunting seasons. If mourning dove productivity estimates are similar for the two methods, we would propose to adopt the more cost-effective method on a national scale.

Comments: On March 16, 2007, we published in the Federal Register (72 FR 12628) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on May 16, 2007. We received one comment. The commenter did not address the information collection requirements, but did protest the entire migratory bird hunting regulations process, surveys and monitoring programs, and the killing of all migratory birds. Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and limit harvest to levels compatible with each population's ability to maintain healthy, viable numbers. Our harvest surveys are an integral part of our monitoring programs, which provide the information that we need to ensure harvest levels are commensurate with current status of migratory game bird populations and long-term population goals.

We again invite comments concerning this information collection on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 14, 2007

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E7–23197 Filed 11–29–07;8:45am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council).

DATES: We will hold the teleconference on Monday, December 17, 2007, 2–4 p.m. (Eastern time). If you wish to listen to the teleconference proceedings, submit written material for the Council to consider, or give a 2-minute presentation during the teleconference, notify Douglas Hobbs by Friday, December 7, 2007. If you wish to submit a written statement for Council consideration during the teleconference, we must receive it no later than December 13, 2007. See instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 N. Fairfax Dr., Mailstop 3103–AEA, Arlington, VA 22203; (703) 358–2336 (phone); (703) 358–2548 (fax), or *doug_hobbs@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we give notice that the Council will hold a teleconference on Monday, December 17, 2007, from 2 to 4 p.m.

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

The Council will convene to: (1) Approve recommendations to the Director of the Fish and Wildlife Service for funding Fiscal Year 2008 Boating Infrastructure Grant proposals; and (2) to consider other Council business. We will post the final agenda on the Internet at *http://www.fws.gov/sfbpc.*

Procedures for Public Input

Format Requirements for Oral and Written Commenters

Whether you wish to comment orally or in written form, you must provide us with written copies of your comments. All written statements must be supplied to the Council Coordinator in *both* of the following formats:

- One hard copy with original signature, and
- One electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Giving a 2-Minute Oral Presentation

Individuals or groups may request to give an oral presentation during the Council teleconference. Oral presentations will be limited to 2 minutes per speaker, with no more than half an hour total for all speakers. Interested parties must contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail; see **FOR FURTHER INFORMATION CONTACT**), by Friday, December 7, 2007, to be placed on the public speaker list for this teleconference. In addition, if you are selected to make a 2-minute presentation, you must provide hard and electronic copies of your presentation to the Council Coordinator by Thursday, December 13, 2007. Additional live questions from the public will not be considered during the teleconference.

Submitting Written Information for the Council To Consider

Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council. Interested members of the public may submit relevant written information for the Council to consider during the public teleconference. We must receive all written statements by Thursday, December 13, 2007, so that we can make the information available to the Council for their consideration prior to the teleconference.

Council Minutes

The Council Coordinator will maintain the teleconference's summary minutes, which will be available for public inspection at the location under **FOR FURTHER INFORMATION CONTACT** during regular business hours within 30 days after the teleconference. You may purchase personal copies for the cost of duplication.

Dated: November 20, 2007.

Geoffrey L. Haskett,

Acting Director.

[FR Doc. E7–23345 Filed 11–29–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–800–1430–ES; COC–71969]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provision of the Recreation and Public Purposes (R&PP) Act, as amended, 43 U.S.C. 869 *et seq.*, and under sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and E.O. 6910, eighty acres of land in Archuleta County, Colorado. Archuleta County proposes to use the land for public recreation purposes.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands until January 14, 2008.

ADDRESSES: Mail written comments to Pagosa Springs Field Manager, Bureau of Land Management, P.O. Box 310, Pagosa Springs, Colorado 81147.

FOR FURTHER INFORMATION CONTACT: Charlie Higby, BLM Realty Specialist, 15 Burnett Court, Durango, Colorado 81301 or phone (970) 385–1374.

SUPPLEMENTARY INFORMATION: The following described public lands in Archuleta County, Colorado have been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, 43 U.S.C. 869 *et seq.*, and under Sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and E.O. 6910, and are hereby classified accordingly. Archuleta County proposes to use the land for: Softball fields, soccer fields, skate-park; outdoor amphitheater; trail system; tennis courts; and associated restroom/concession/storage buildings. The land is approximately three miles northwest of Pagosa Springs, Colorado.

New Mexico Principal Meridian, Colorado

T. 35 N., R. 2 W.,
Sec. 4, SW¼NE¼, and NE¼SE¼.

The area described contains approximately 80 acres.

The land is not required for any Federal purpose. Lease/conveyance of the land is consistent with the BLM San Juan/San Miguel Resource Management Plan dated September 1985, and would be in the public interest. The lease/conveyance of the lands, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. All mineral deposits in the lands shall be reserved to the United States together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.
3. All valid existing rights
4. A right-of-way, across the above described lands, for access road purposes granted to Williams Family Trust, its successors or assigns, by right-of-way COC–56189, pursuant to the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development for public recreation facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments: Interested persons may submit comments, including notification of any encumbrances or other claim relating to the parcel, and regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factors not directly related to the suitability of the land for public recreation facilities. Any adverse comments will be reviewed by the BLM Colorado State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, the classification will become effective on January 29, 2008.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Pagosa Springs Field Office, will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered properly filed. Documents related to this action are on file at the BLM Pagosa Springs Field Office at the address above and may be reviewed by the public at their request. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state it prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of an organization or business.

Authority: 43 Code of Federal Regulations (CFR) 2741.5.

Dated: November 19, 2007.

Kevin Khung,

Pagosa Field Office Manager.

[FR Doc. E7–23228 Filed 11–29–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1610–DQ]

Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Ely Field Office, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for public lands and resources administered by the Ely Field Office, Nevada.

DATES: The BLM Planning Regulations set forth the provisions applicable to protests (43 CFR 1610.5–2). A person who meets the conditions as described in the regulations cited above, and who wishes to file a protest must file said protest within 30 days of the date this notice is published in the **Federal Register.** Additional information on protests is set forth in the Dear Reader letter of the Ely Proposed RMP and Final EIS and in the **SUPPLEMENTARY INFORMATION** section of this notice. To ensure compliance with the protest regulations, please consult the BLM's Planning regulations at 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, contact

Jeff Weeks, RMP Project Manager, 702 North Industrial Way, Ely, Nevada 89301, (775) 289–1825, or correspond by e-mail to *elyrmp@blm.gov*.

SUPPLEMENTARY INFORMATION: The Ely RMP planning area is located in east-central Nevada in Lincoln, White Pine and a portion of Nye counties. The planning area addressed in the RMP/EIS contains approximately 11,500,000 acres of public lands administered by the BLM Ely Field Office and the Caliente Field Station. The PRMP/FEIS focuses on the principles of multiple use and sustained yield as prescribed by section 202 of the FLPMA. The following entities participated in development of the RMP as cooperating agencies with special expertise: Great Basin National Park; Humboldt-Toiyabe National Forest; Nellis Air Force Base; Nevada Department of Transportation; Nevada Division of Minerals; Nevada Department of Wildlife; Nevada State Historic Preservation Office; Lincoln County; Nye County; White Pine County; Duckwater Shoshone Tribe; Ely Shoshone Tribe; Moapa Band of Paiutes; and the Yomba Shoshone Tribe.

The public involvement and collaboration process implemented for this effort included six open houses during scoping; presentations to interested organizations upon their invitation; presentations to and suggestions from the Mojave/Southern Great Basin and the Northeastern Great Basin resource advisory councils; distribution of information via the Ely RMP website and periodic newsletters; six public meetings on the Draft RMP/EIS; and public and agency review and comment on the Draft RMP/EIS. A copy of the PRMP/FEIS will be sent to individuals, groups, and agencies who requested a copy, or as required by regulation or policy.

The PRMP/FEIS considers and analyzes five (5) alternatives, including the BLM's Proposed RMP, the No Action Alternative (continuation of existing management), and alternatives that emphasize restoration of ecological systems, commodity production, and exclusion of permitted discretionary uses. These alternatives were developed based on public input including public scoping comments; numerous meetings with local, county, state, tribal, and federal agencies (cooperating agencies); informal meetings with interested organizations upon their request; and public and agency comments on the Draft RMP/EIS. The alternatives provide for an array of alternative land use allocations and variable levels of commodity production and resource protection and restoration. After any protests are resolved and any pertinent adjustments are made, an approved RMP and Record of Decision are expected to be available by the end of 2007.

The issues addressed in the formulation of alternatives include maintenance and restoration of resiliency of vegetation within the Great Basin and Mojave Desert, protection and management of habitats for special status species, upland and riparian habitat management, noxious weed control, commercial uses (including livestock grazing, special recreation permits, mineral development, oil and gas leasing, rights-of-way, and communication use areas), designation of areas of critical environmental concern (ACECs), travel management, land disposal, and management of wild horses.

The Proposed RMP would retain three existing ACECs: Beaver Dam Slope ACEC (36,800 acres), Kane Springs ACEC (61,680 acres), Mormon Mesa ACEC (109,680 acres) and would designate 17 new ACECs (114,270 acres) for a total of 322,430 acres, which is less than 3 percent of the planning area. The new ACECs include:

Baker Archaeological Site ACEC (80 acres).

Baking Powder Flat ACEC (13,640).

Blue Mass Scenic Area ACEC (950 acres).

Condor Canyon ACEC (4,500 acres).

Hendry's Creek/Rock Animal Corral ACEC (3,650 acres).

Highland Range ACEC (6,900 acres).

Honeymoon Hills/City of Rocks ACEC (3,900 acres).

Lower Meadow Valley Wash ACEC (25,000 acres).

Mount Irish ACEC (15,100 acres).

Pahroc Rock Art ACEC (2,400 acres).

Rose Guano Bat Cave ACEC (40 acres).

Schlesser Pincushion ACEC (4,930 acres).

Shooting Gallery ACEC (15,600 acres).

Shoshone Ponds ACEC (1,240 acres).

Snake Creek Indian Burial Cave ACEC (40 acres).

Swamp Cedar ACEC (3,200 acres).

White River Valley ACEC (13,100 acres).

The following types of resource use limitations would generally apply to these ACECs: (1) Motorized travel would be limited to designated roads and trails; (2) limited collection of plants in ACECs designated for the protection of special status plants; (3) limitations on livestock grazing in ACECs designated for protection of special status plants and animals; (4) limits on land disposal and rights-of-way; and (5) closure or limits on new mineral development (mineral leasing, locatable minerals and mineral material disposal) to protect unique cultural values, special status plants and animals. For detailed information, see Section 2.4.22 of the PRMP/FEIS.

Documents pertinent to the PRMP/FEIS will be available for public review at the Ely Field Office, 702 North Industrial Way, Ely, Nevada during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Review copies of the PRMP/FEIS are available at the following locations in and near the planning area:

BLM Caliente Field Station.
BLM Elko Field Office.
BLM Ely Field Office.
BLM Las Vegas Field Office.
BLM Nevada State Office.
Forest Service Ely Ranger District.
Great Basin National Park.
Lincoln County Courthouse.
Lincoln County Public Library.
Nye County Courthouse.
Nye County Public Library.
White Pine County Courthouse.
White Pine County Public Library.

The PRMP/FEIS may also be viewed and downloaded in PDF format at the Ely RMP Web site at *http://www.blm.gov/nv/st/en/fo/ely_field_office.html*.

As noted above, instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found at 43 CFR 1610.5–2. Electronic mail and facsimile protests will be considered only if the protesting party provides BLM with the original letter by either regular or overnight mail postmarked by the close of the protest period. Under those conditions, the BLM will consider the electronic or facsimile version as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. All protests must be in writing and mailed to one of the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to

withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

As provided in 43 CFR 1610.5–2(a)(3), "The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior."

Ron Wenker,

State Director.

[FR Doc. E7–23190 Filed 11–29–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 et seq.) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a revision of a currently approved collection (OMB 1024–0038).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before December 31, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0038), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to John W. Renaud, Project Coordinator, Historic Preservation Grants, Heritage Assistance Programs, NPS, 1849 C St., NW. (2256), Washington, DC 20240; or via fax at 202/371–1961; or via e-mail at *John_Renaud@nps.gov*.

FOR FURTHER INFORMATION CONTACT: John W. Renaud, Project coordinator, Historic Preservation Grants, Heritage Assistance Programs, NPS, 1849 C St., NW. (2256), Washington, DC 20240; or via fax at 202/371–1961; or via e-mail at *John_Renaud@nps.gov*, or via telephone at 202/354–2066. You are entitled to a copy of the entire ICR package free-of-charge.

Comments Received on the 60-Day **Federal Register** *Notice:* The NPS published a 60-Day Notice to solicit public comment on this ICR in the **Federal Register** on August 1, 2007 (Vol. 72, No. 147, Pages 42106–42108). The comment period closed on October 1, 2007. The NPS received no comments as a result of the publication of this 60-Day **Federal Register** Notice.

SUPPLEMENTARY INFORMATION:

Title: Procedures for State, Tribal, and Local Government Historic Preservation Programs; 36 CFR part 61.

Bureau Form Number(s): None.

OMB Number: 1024–0038.

Expiration Date of Approval: November 30, 2007.

Type of Request: Revision of a currently approved collection of information.

Description of Need: This set of information collections has an impact on State, tribal, and local governments that wish to participate formally in the National Historic Preservation Partnership (NHPP) Program, and State and tribal governments that wish to apply for Historic Preservation Fund (HPF) grants. The NPS uses the information collections to ensure compliance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.) as well as the government-wide grant requirements that OMB has issued and the Department of the Interior implements through 43 CFR part 12. This information collection also produces performance data that NPS uses to assess its progress in meeting goals set in Departmental and NPS strategic plans created pursuant to the 1993 Government Performance and Results Act, as amended. This request for OMB approval includes local government burden for information collections associated with various aspects of the Certified Local Government (CLG) program; State government burden for information collections related to the CLG program, the program-specific aspects of the HPF grants to States, maintenance of a State inventory of historic and prehistoric properties, tracking State Historic preservation Office historic preservation consultation with Federal agencies, reporting on other State historic preservation accomplishments, and the State role in the State Program Review Process; and tribal government burden for information collections related to the program-specific aspects of HPF grants to THPOs.

This request includes information collections related to HPF grants to States and to Tribal Historic Preservation Officers/Offices (THPOs). NPS is seeking the revision to reflect the increased number of partners participating in the NHPP and consequently in the previously approved information collections. In addition, a revision is needed because some information collections had not been recognized as such during preparation for earlier OMB approvals. Section 101(b) of the National Historic Preservation Act, as amended, (16 U.S.C. 470a(b)) specifies the role of States in the NHPP program. Section 101(c), section 103(c), and section 301 of the Act (16 U.S.C. 470a(c), 16 U.S.C. 470c(c), and 16 U.S.C. 470w) specify the role of local governments in the NHPP program. Section 101(d) of the Act (16 U.S.C. 470a(d)) specifies the role of tribes in the NHPP program. Section 108 of the Act (16 U.S.C. 470h) created the HPF to support activities that carry out the purposes of the Act. Section 101(e)(1) of the Act (16 U.S.C. 470a(e)) directs the Secretary of the Interior through the NPS to "administer a program of matching grants to the States for the purposes of carrying out" the Act. Similarly, sections 101(d) and 101(e) of the Act direct a program of grants to THPOs for carrying out their responsibilities under the Act. Each year Congress directs NPS to use part of the annual appropriation from the HPF for the State grant program and the tribal grant program. The purpose of both the HPF State grants program and the HPF THPO grants program is to assist States and tribes in carrying out their statutory role in the national historic preservation program. HPF grants to States and THPOs are program grants; i.e., each State/THPO selects its own HPF-eligible activities and projects. Each HPF grant to a State/THPO has two years of fund availability. At the end of the first year, NPS employs a "Use or Lose" policy to ensure efficient and effective use of the grant funds. All 59 States, territories, and the District of Columbia participate in the NHPP program. Almost 1,600 local governments have become Certified Local Governments (CLGs) in order to participate in the NHPP program. Approximately 54 local governments become CLGs each year. Fifty-seven federally-recognized tribes have joined formally the NHPP and have established Tribal Historic Preservation Officers and tribal historic preservation offices. Typically, each year five to seven tribes join the partnership. NPS developed the information collections associated with 36 CFR Part 61 in consultation with State, Tribal, and local government partners. The obligation to respond is required to provide information to

evaluate whether or not State, tribal, and local governments meet minimum standards and requirements for participation in the NHPP program; and to meet government-wide requirements for Federal grant programs.

Comments are invited on: (1) Practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Automated data collection: NPS has made available to States for completion on-line all of the forms for the HPF State Grants program.

Frequency of collection: Annually.

Description of respondents: State, tribal, and local governments that wish to participate formally in the National Historic Preservation partnership Program and who wish to apply for Historic Preservation fund grant assistance.

Estimated average number of respondents/record keepers: The net number of partners participating in this set of information collections annually is 59 States, territories, and the District of Columbia, 57 Tribes, and 1,554 CLGs.

Estimated average number of responses: NPS estimates that there are 35,927 responses per year. This is the gross number of responses for all of the elements included in this set of information collections.

Estimated average number of State HPF grant-related applicant responses: 58 per year.

Estimated average gross number of State HPF grant-related grantee responses: 407 per year.

Estimated average gross number of State HPF grant-related responses for successful Applicants/Grantees: 465 per year.

Estimate average number of THPO HPF grant-related Applicant responses: 57 per year.

Estimate average gross number of THPO HPF grant-related grantee responses: 143 per year.

Estimated average gross number of THPO HPF application plus grant-related responses: 200 per year.

Estimated average number of State and local CLG program related responses per State/CLG: 44 per year.

Estimated average gross number State and local CLG program related responses for all States/CLGs: 2,936 per year.

Estimated average minimum number of State inventory responses per State: 78 per year.

Estimated average gross minimum number of State inventory responses for all States: 4,602 per year.

Estimated average minimum number of State consultation on Federal project responses per State: 445 per year.

Estimated average gross minimum number of State consultation of Federal projects responses for all States: 26,255 per year.

Estimated average number of other State performance reports per State: 1 per year.

Estimated average gross number of other State performance reports for all States: 25 per year.

Estimated average minimum number of State Program Reviews per State: 1 per year.

Estimated average gross minimum number of State Program Reviews for all States: 14 per year.

Estimated average gross number of responses for all non-grant collections: 33,793 per year.

Estimated average time burden per respondent: NPS estimates that the total public (State plus local) burden for the Certified Local Government (CLG) program averages 36 hours per CLG for the certification, monitoring, and evaluation of each CLG and 45 minutes for reporting of other CLG accomplishments. NPS estimates that the total public (State) burden averages 10 minutes per Federal agency project tracked, 45 minutes per inventory record, 2 hours per reporting on other State accomplishments, and 90 hours per State Program Review. NPS estimates that the total public burden for collections not directly tied to grants is 129 hours per respondent. NPS estimates that the public burden for the HPF-supported State grant program collections of information will average 12 hours per application and 17 hours per grant per year for all of the grant-related collections. The combined total public burden for the HPF State grant program-related information collections would average 29 hours per successful applicant/grantee. NPS estimates that the total public burden for the HPF THPO grant program-related information collections would average 14 hours per successful applicant/grantee. These burden estimates are a one-year average for the two-year grants. The combined total public burden for the 36 CFR part 61-related information collections would average 133 hours per partner. These estimates of burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Estimated average burden hours per State HPF grant-related Applicant response: 12 hours.

Estimated average burden hours per State HPF grant-related Grantee response: 17 hours.

Estimated total annual average burden hours per State HPF grant-related respondent: 29 hours.

Estimated total annual average burden hours for all State HPF grant-related responses: 1,541 hours.

Estimated average annual burden hours per THPO HPF grant-related Applicant/Grantee for all responses: 14 hours.

Estimated total annual average burden hours for all THPO HPF grant-related respondents: 781 hours.

Estimated average burden hours in the CLG program per response: 12 hours.

Estimated average burden hours in the State inventory program per response: 40 minutes.

Estimated average burden hours in the Federal agency consultation tracking program per response: 10 minutes.

Estimated average burden hours in other performance reporting per response: 3 hours.

Estimated average burden hours in the State Program Review program per response: 90 hours.

Estimated average annual burden hours per partner for all non grant-related responses: 710 hours.

Estimated Annual Burden on all Respondents for all non grant-related responses: 33,606 hours.

Frequency of response: The frequency of response varies depending upon the activity. In the CLG program, States and local governments participate once for the certification process, once per year for the monitoring of each CLG, once every four years for the evaluation of each CLG, and once a year on a voluntary basis for other performance reporting. Each State adds property records to its inventory and tracks the progress of consultation with Federal agencies as the information becomes available. Each State reports once a year on a voluntary basis for other performance reporting. The National

Historic Preservation Act requires that each State undergo a State Program Review every four years. For the program-specific aspects of the HPF grants to State program, the estimated number of responses includes a "Cumulative Products Table" of projected performance in summary format, an "Organization Chart" showing the availability of appropriately qualified staff, and a (major) "Anticipated Activities List". During the grant cycle, grantees seek NPS approval once for a subgrant (via a project notification) and associated final project report. Each year, every State submits an "End of Year Report" that includes the Cumulative Products Table (which compares actual to proposed performance), a "Sources of Nonfederal Matching Share Report," a "Project/Activity Database Report," an "Unexpended Carryover Funds Table and Carryover Statement," and a "Significant Preservation Accomplishments Summary." For the program-specific aspects of the HPF grants to THPOs program, the estimated number of responses includes a grant application scope of work, a "Grants Product Summary Table," an unexpended funds carry-over statement, and a "THPO Annual Report" (a narrative summary of important accomplishments).

Estimated total annual burden: NPS estimates that the estimated combined annual burden on all respondents for all responses will be 35,927 hours.

Dated: November 27, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–5889 Filed 11–29–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on August 22, 2007. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearing will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Frequently Used in This Document

BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission

O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

Modified contract action:

15. Six irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program. Five letter agreements have been executed.

Discontinued contract action:

7. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

46. *San Luis WD and Meyers Farms Family Trust, CVP, California:* Contract for exchange of water among the U.S., San Luis WD, and Meyers Farms Family Trust. The contract will allow for an exchange with Reclamation of previously banked water for a like amount of CVP water made available to San Luis WD on behalf of Meyers Farms.

47. *Goleta WD, Cachuma Project, California:* Subject to legislation, an agreement to transfer title of the Federally owned distribution system to the district.

48. *El Dorado County Water Agency, CVP, California:* M&I water service contract to supplement existing water supply: 15,000 acre-feet, under Fazio legislation, for El Dorado County Water Agency authorized by Public Law 101–514. The supply would be split by subcontrators to El Dorado ID and Georgetown Divide Public Utility District.

49. *Sacramento Municipal Utility District, CVP, California:* Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 30,000 acre-feet of CVP water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

50. *El Dorado ID, CVP California:* Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for Weber Reservoir and pre-1914 'ditch' rights in the amount of 4,560 acre-feet, and one contract for Project 184 water in the amount of 17,000 acre-feet). The contracts will allow CVP facilities to be used to deliver nonproject water to El Dorado for use within its service area.

51. *Sacramento Area Flood Control Agency, CVP, California:* Execution of a long-term operations agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law.

52. *Sacramento Suburban WD, CVP, California:* Execution of long-term Warren Act contract for conveyance of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to Sacramento Suburban WD for use within its service area.

53. *Placer County Water Agency, CVP, California:* Proposed exchange agreement under Section 14 of the 1939 Act of up to 74,000 acre-feet.

Completed contract action:

17. *Carpinteria WD, Cachuma Project, California:* Contract to transfer title of distribution system to the district. Title transfer authorized by Public Law 108–315 "Carpinteria and Montecito Water Distribution Conveyance Act of 2004." Contract executed November 7, 2006.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New contract action:

34. *Mohave County Water Authority, BCP, Arizona:* Assign a portion of Mohave County's Colorado River water entitlement to the Arizona Game and Fish Commission.

Completed contract action:

15. Jessen Family Limited Partnership (now JRJ Partners, LLC), BCP, Arizona: Contract for delivery of 1,080 acre-feet of Colorado River water for agricultural purposes. Contract was executed on September 27, 2007.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

1.(f) *Ward Creek LLC, Aspinall Storage Unit, CRSP:* Ward Creek LLC has requested a 40-year water service contract for 1 acre-foot of M&I water out of the Blue Mesa reservoir, which requires Ward Creek LLC to present a Plan of Augmentation to the Division 4 Water Court.

36. *Cottonwood Creek Consolidated Irrigation Company, Emery County Project, Utah:* Warren Act contract for carriage of up to 5,600 acre-feet of nonproject water through Cottonwood Creek-Huntington Canal.

37. *Albuquerque Bernalillo County Water Utility Authority and Reclamation, San Juan-Chama Project, New Mexico:* Contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term and would replace existing contract No. 3–CS–53–01510 which expires on January 26, 2008. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.

Modified contract action:

1.(e) *Old Castle SW Group dba United Companies, Aspinall Storage Unit, CRSP:* United Companies has requested a 40-year water service contract for 5 acre-feet of M&I water out of Blue Mesa reservoir, which requires United Companies to present a Plan of Augmentation to the Division 4 Water Court.

Discontinued contract actions:

22. *Weber River Water Users Association, Weber River Project, Utah:* Contract providing for the association to repay to the United States 15 percent of the cost of SOD modifications at Echo Dam.

30. *Weber Basin Water Conservancy District, Weber Basin Project, Utah:* Contract providing for the District to repay the United States 15 percent of the cost of SOD modifications to the foundation of Arthur V. Watkins Dam.

Completed contract actions:

1.(d) *John and Joan Holton, Aspinall Storage Unit, CRSP:* Mr. and Mrs. Holton have requested a 40-year water service contract for 1 acre-foot of M&I water out of Blue Mesa reservoir, which requires Mr. and Mrs. Holton to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed on July 17, 2007.

28. *North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado:* North Fork and Ragged Mountain have requested a contract for supplemental water from the Paonia Project. Their contract expired on December 31, 2005, and the amended contract was executed on January 27, 2006. There is a need to amend this contract to include reference to the M&I

contract waiting to be executed. Contract was executed on May 21, 2007.

33. *Uintah Water Conservancy District, Jensen Unit, Central Utah Project, Utah:* Temporary water service contract for 2,520 acre-feet of unsubscribed Jensen Unit M&I water. Contract was executed on July 23, 2007.

34. *Weber Basin Water Conservancy District, Weber Basin Project, Utah:* Contract providing for the District to repay to the United States 15 percent of the cost of Phase I SOD modifications to Arthur V. Watkins Dam. Contract was executed in September 2007.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

New contract action:

57. *Big Horn Canal ID, Boysen Unit, P–SMBP, Wyoming:* Big Horn Canal ID has requested a renewal of their long-term water service contract.

Modified contract actions:

12. *Savage ID, P–SMBP, Montana:* The district is currently seeking title transfer. The contract is subject to renewal pending outcome of the title transfer process. The existing interim contract is due to expire in May 2008. Preparing to renew long-term contract upon request by the Savage ID.

27. *LeClair-Riverton ID, Boysen Unit, P–SMBP, Wyoming:* Contract renewal of long-term water service contract.

56. *Turtle Lake ID, Garrison Diversion Unit, North Dakota:* Turtle Lake ID has requested a water service contract under the Dakota Water Resources Act of 2000 as part of the Garrison Diversion Unit.

Discontinued contract action:

50. *Twin Lakes Reservoir and Canal Company, Fryingpan-Arkansas Project, Colorado:* Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

Completed contract actions:

5. *City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota:* Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 acre-feet) water service contract has been executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract for 49,000 acre-feet has been negotiated with the City, and a final draft of the contract has been transmitted to the City for approval by their City Council. The contract was executed July 31, 2007.

6. *Mid-Dakota Rural Water System, Inc., South Dakota:* Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation for the planning and construction of a rural water supply system. Construction of the rural water supply system was completed in September 2006. The contract was amended on August 31, 2007, to convert payments from monthly to annually.

10. *Fort Clark ID, P–SMBP, North Dakota:* Negotiation of water service contract to continue delivery of project water to the district. The contract was executed on July 19, 2007.

17. *Fryingpan-Arkansas Project, Colorado:* Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Colorado Springs Utilities. The contract with the City of Aurora was executed on September 12, 2007.

Dated: October 24, 2007.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E7–23230 Filed 11–29–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Final Finding of No Significant Impact for Improvements to the Main and North Floodways Levee System in the Lower Rio Grande Flood Control Project, Hidalgo, Cameron and Willacy Counties, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment (EA) and Final Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508), and the United States Section, International Boundary and Water Commission's (USIBWC) Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice of availability of the Final Environmental Assessment and FONSI for Improvements to the Main and North Floodways Levee System, in the Lower Rio Grande Flood Control Project, located in Hidalgo, Cameron and Willacy Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4767; e-mail: *daniel.borunda@ibwc.state.gov.*

DATES: The Final EA and FONSI will be available November 30, 2007.

SUPPLEMENTARY INFORMATION:

Background

The USIBWC is authorized to construct, operate, and maintain any project or works projected by the United States of America on the Lower Rio Grande Flood Control Project (LRGFCP), as authorized by the Act of the 74th Congress, Sess. I Ch. 561 (H.R. 6453), approved August 19, 1935 (49 Stat. 660), and codified at 22 U.S.C. Section 277, 277a, 277b, 277c, and Acts amendatory thereof and supplementary thereto. The LRGFCP was constructed to protect urban, suburban, and highly developed irrigated farmland along the Rio Grande delta in the United States and Mexico.

The USIBWC, in cooperation with the Texas Parks and Wildlife Department, prepared this EA for the proposed action to improve flood control along sections of the Main and North Floodways Levee System located in Hidalgo, Cameron, and Willacy Counties, Texas. This levee system is part of the LRGFCP that extends approximately 180 miles from the Town of Peñitas in south Texas to the Gulf of Mexico. The Main and North Floodway Levee system extends approximately 75 levee miles, downstream from Anzalduas Dam, and extending near the town of Mercedes to the Laguna Madre northwest of Arroyo City, Texas.

Proposed Action

Alternatives to the Proposed Action

The Proposed Action would increase the flood containment capacity of the Main and North Floodways Levee System by raising the elevation of a number of levee segments for improved flood protection. Fill material would be added to the existing levee to bring height to its original design specifications, or to meet a 2 feet freeboard design criterion. Typical height increases in improvement areas would be less than 1 foot and would not require expansion of the existing levee footprint.

In some locations, up to 2 feet of fill material would be placed on top of the

levee, extending the levee footprint up to a maximum of 12 feet from the current toe of the levee This expansion would take place along the approximately 20 foot service corridor currently utilized for levee maintenance, inside the maintained floodway, and entirely within the flood control project right-of-way. In some instances, adjustment in levee slope would be made to eliminate the need for levee footprint expansion, when required due to engineering considerations or for protection of biological or cultural resources. The need for excavation outside the levee structure is not anticipated.

Summary of Findings

Pursuant to NEPA guidance (40 Code of Federal Regulations 1500–1508), the President's Council on Environmental Quality issued regulations for NEPA implementation which included provisions for both the content and procedural aspects of the required Environmental Assessment. The USIBWC completed an EA of the potential environmental consequences of raising the Main and North Floodways Levee System to meet current requirements for flood control. The EA, which supports this Finding of No Significant Impact, evaluated the Proposed Action and No Action Alternative.

Levee System Evaluation

No Action Alternative

The No Action Alternative was evaluated as the single alternative action to the Proposed Action. The No Action Alternative would retain the current configuration of the Main and North Floodways Levee System, with no impacts to biological and cultural resources, land use, community resources, or environmental health issues. In terms of flood protection, however, current containment capacity under the No Action Alternative may be insufficient to fully control Rio Grande flooding under severe storm events, with associated risks to personal safety and property.

Proposed Action

Biological Resources

Improvements to the levee system require placement of fill material that would affect grassed areas at levee footprint expansion locations. All expansion would take place along the current levee service corridor, limiting vegetation removal to invasive-species grasslands; this grass cover is expected to be rapidly re-established after project completion.

No significant effects are anticipated on wildlife habitat in the vicinity of the levee system, including potential habitat for threatened and endangered species. While approximately 17 percent of levee system is adjacent to natural resources conservation areas, only a small fraction would fall within levee improvement areas. In areas requiring levee footprint expansion, no woodland communities would be impacted; impacts on vegetation would be limited to non-native grasslands along the levee, of very limited value as wildlife habitat. No wetlands are located within the potential levee expansion area.

Cultural Resources

Improvements to the Main and North Floodways Levee System are not expected to adversely affect known archaeological or historical resources. Typically, placement of fill material over the existing levee would not expand the levee footprint; when levee footprint expansion is needed, expansion would take place within the service corridor currently used for levee maintenance. High-Probability Areas (HPAs) identified along the levee system would be located outside the improvement areas, with minor exceptions. In areas where HPAs are located near improvement areas, the need for footprint expansion would be eliminated by adjusting levee slope to retain current location of the toe of the levee.

Cultural resources located in the general vicinity of the levee system include historic age structures. Potential historic-age resources near the levee system would not be affected because most of those resources are located outside of the floodway, and away from potential levee footprint expansion areas. Only irrigation canals and minor irrigation structures, such as weir gates and standpipes, are located within or near the levee service corridor where footprint expansion would take place; irrigation canals and nearly all irrigation structures would be retained in their current condition.

Water Resources

Improvements to the levee system would increase flood containment capacity to control the design flood event with a negligible increase in water surface elevation. Levee footprint expansion would not affect water resources.

Land Use

Footprint levee expansion, where required, would take place completely within the existing floodway and along the levee service corridor. No urban or agricultural lands would be affected. Impacts to natural resources conservation areas would be limited to grassland areas.

Community Resources

In terms of socioeconomic resources, the influx of federal funds into Hidalgo, Cameron, and Willacy Counties from the levee improvement project would have a positive but minor local economic impact. The impact would be limited to the construction period, and represent less than 1 percent of the annual county employment, income and sales values. No adverse impacts to disproportionately high minority and low-income populations were identified for construction activities. A moderate increase in utilization of public roads would be required during construction; a temporary increase in access road use would be required for equipment mobilization to staging areas.

Environmental Health Issues

Estimated air emissions of five criteria pollutants during construction represent less than 1.1 percent of the annual emissions inventory of Hidalgo, Cameron, and Willacy Counties. There would be a moderate increase in ambient noise levels due to construction activities. No long-term and regular exposure is expected above noise threshold values. A database search indicated that no waste storage and disposal sites were within the proposed Main and North Floodway Levee Project area, and none would affect, or be affected, by the levee improvement project.

Best Management Practices

When warranted due to engineering considerations, or for protection of biological or cultural resources, the need for levee footprint expansion would be eliminated by levee slope adjustment. Best management practices during construction would include development of a storm water pollution prevention plan to avoid impacts to receiving waters, and use of sediment barriers and soil wetting to minimize erosion and dust.

To protect vegetation cover, both the modified levee and construction corridor would be re-vegetated with native herbaceous species. To protect wildlife, construction activities would be scheduled to occur, to the extent possible, outside the March to August bird migratory season.

Availability

Single hard copies of the Final Environmental Assessment and Finding of No Significant Impact may be

obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.state.gov.*

Dated: November 20, 2007.

Allen Thomas,

Attorney Advisor.

[FR Doc. E7–23029 Filed 11–29–07; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1131–1134 (Preliminary)]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, Thailand, and the United Arab Emirates

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, China, Thailand, and the United Arab Emirates of polyethylene terephthalate film, sheet, and strip provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 28, 2007, a petition was filed with the Commission and Commerce by DuPont Teijin Films, Hopewell, VA; Mitsubishi Polyester Film of America, Greer, SC; SKC America, Inc., Covington, GA; and Toray Plastics (America), Inc., North Kingston, RI, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of polyethylene terephthalate film, sheet, and strip from Brazil, China, Thailand, and the United Arab Emirates. Accordingly, effective September 28, 2007, the Commission instituted antidumping duty investigation Nos. 731–TA–1131–1134 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 5, 2007 (72 FR 57068). The conference was held in Washington, DC, on October 19, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2007. The views of the Commission are contained in USITC Publication 3962 (November 2007), entitled *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates: Investigation Nos. 731–TA–1131–1134 (Preliminary).*

By order of the Commission.

Issued: November 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23223 Filed 11–29–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 332–494]

U.S.-Israel Agricultural Trade: Probable Economic Effect on U.S. and Israeli Agricultural Industries of Conducting Such Trade in a Free Trade Environment

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 23, 2007, of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–494, *U.S.-Israel Agricultural Trade: Probable Economic Effect on U.S. and Israeli Agricultural Industries of Conducting Such Trade in a Free Trade Environment.*

DATES: *December 21, 2007:* Deadline for filing requests to appear at public hearing.

January 3, 2008: Deadline for filing pre-hearing briefs and statements.

January 10, 2008: Public hearing.

January 16, 2008: Deadline for filing post-hearing briefs and statements.

February 1, 2008: Deadline for all other submissions.

April 23, 2008: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions, including requests to appear at the hearing, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Project leader Mark Simone (202–205–2049 or *mark.simone@usitc.gov*) or deputy project leader Erick Oh (202–205–3033 or *erick.oh@usitc.gov*) for information specific to this investigation. For information on the legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *william.gearhart@usitc.gov.* The media should contact Margaret O'Laughlin, Office of External Relations at 202–205–1819 or *margaret.olaughlin@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD

terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://usitc.gov/secretary/edis.htm*. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: According to the USTR's letter, the Governments of the United States and Israel are scheduled to initiate discussion in January 2008 of the United States-Israel Agreement on Trade in Agricultural Products (ATAP) to seek ways to improve the ATAP prior to its expiration on December 31, 2008. The ATAP is an adjunct to the Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America (FTA), which was implemented in 1985 and applies to trade in all products between the two countries. According to the letter, the United States and Israel have held differing views as to the meaning of certain rights and obligations related to agricultural products under the FTA. The ATAP was intended to address issues that have arisen based on these differing interpretations. Following the implementation of the 1985 FTA, most Israeli agricultural products exported to the United States had duty-free access to the U.S. market. The letter indicates that U.S. exporters of agricultural products, however, have continued to face significant market access barriers in Israel despite the ATAP; the letter states that an objective of the proposed negotiations on the ATAP is to address these barriers.

To assist USTR in preparing for these negotiations, the USTR requested, under authority delegated by the President and pursuant to section 332(g) of the Tariff Act of 1930, that the Commission initiate an investigation and prepare a report that provides advice as to the probable economic effect on both the U.S. and Israeli agricultural industries, respectively, if U.S.-Israel agricultural trade was conducted in a free trade environment. The USTR asked that the Commission, to the extent practicable, include the following in its report:

- Advice at the industry level that focuses on the main products traded or likely to be traded between the United States and Israel. The USTR asked that the Commission, in preparing its advice, assume that the new ATAP would include elimination of tariffs and tariff-rate quotas (TRQs) on all agricultural products so as to calculate its maximum potential impact. The USTR asked that the Commission seek to measure these effects, to the extent data permit, through the use of partial equilibrium analysis or other quantitative methods.
- A list of the principal existing Israeli non-tariff barriers to agricultural trade, whether or not justified (such as technical barriers to trade, sanitary and phytosanitary measures, and TRQ administration) and information on TRQ fill rates, compiled from publicly available sources, and an analysis of their impact on U.S. agricultural exports to Israel.
- A description of Israeli agricultural trade, covering the major products and trading partners during 2002–2006, focusing on the countries and regions that have free trade agreements in effect with Israel.
- A description of the Israeli agricultural sector compiled from publicly available sources, including, to the extent possible, regional production and employment patterns, and principal factors affecting the competitiveness of the Israeli agricultural sector in domestic and international markets.

As requested by the USTR, the Commission expects to deliver its report by April 23, 2008. The USTR indicated that portions of the report will be classified as confidential.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on January 10, 2008. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., December 21, 2007, in accordance with the requirements in the "Written Submissions" section below. In the event that, as of the close of business on December 21, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after December 21, 2007, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements and briefs concerning this investigation. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary. Pre-hearing briefs and statements should be filed not later than 5:15 p.m., January 3, 2008; and post-hearing briefs and statements should be filed not later than 5:15 p.m., January 16, 2008. All other submissions should be filed not later than 5:15 p.m., February 1, 2008. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR. If the Commission publishes a public version of the report, the published version will not include portions of the report that the USTR has classified as confidential and will also not include any confidential business information.

By order of the Commission.

Issued: November 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23224 Filed 11–29–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–614]

In the Matter of: Certain Wireless Communication Chips and Chipsets, and Products Containing Same, Including Wireless Handsets and Network Interface Cards; Notice of Commission Determination Not To Review an Initial Determination Granting Respondent's Motion To Terminate the Investigation Due to a Pending Arbitration

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 5) granting respondent's motion to terminate the investigation due to a pending arbitration.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 21, 2007, based on a complaint filed by Nokia Inc. of Irving, Texas and Nokia Corporation of Espoo, Finland (collectively "Nokia"). 72 FR 54069. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communication chips and chipsets, and products containing same, including wireless handsets and network interface cards, by reason of infringement of certain claims of U.S. Patent Nos. 7,236,761; 6,714,091; 6,292,474; 5,896,562; and 5,752,172. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named QUALCOMM, Inc. ("Qualcomm") of San Diego, California as the respondent.

On October 18, 2007, the ALJ issued an ID (Order No. 5) granting respondent's motion to terminate the investigation due to a pending arbitration. On October 25, 2007, Nokia filed a petition for review of the ALJ's ID. On November 1, 2007, Qualcomm and the Commission investigative attorney filed briefs in opposition to Nokia's petition for review. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21(a)(2) and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21(a)(2), 210.42(h).

By order of the Commission.

Issued: November 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23220 Filed 11–29–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on May 8, 2007, American Custom Chemicals Corporation, 6650 Lusk Boulevard, Suite B102, San Diego, California 92121, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Sufentanil (9740), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for research purposes only.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than December 31, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–43746), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 20, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–23187 Filed 11–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of

such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on August 16, 2007, Clinical Supplies Management, Inc., 4733 Amber Valley Parkway, Fargo, North Dakota 58104, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Sufentanil (9740)	II

The company plans to import the listed controlled substances for clinical trials, research, analytical purposes, and distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than December 31, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 19, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–23188 Filed 11–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on October 12, 2007, Lipomed Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Methcathinone (1237)	I
N-ethylamphetamine (1475)	I
Gamma Hydroxybutyric Acid (2010).	I
2,5-Dimethoxy-4-[n]-propylthiophenethylamine (7348).	I

The company plans to import the listed controlled substances for clinical trials, research, analytical purposes, and distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA. 22152; and must be filed no later than December 31, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 20, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–23184 Filed 11–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 1, 2007, Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702–3232, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance in bulk for formulation into the pharmaceutical controlled substance Marinol®.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administrator, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to

Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 29, 2008.

Dated: November 20, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–23185 Filed 11–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1475]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board to review applications for the 2006–2007 Medal of Valor Awards and to discuss upcoming activities. Due to the late scheduling of this meeting, publication 15 days prior to the meeting was not possible. This notice will be published less than 15 days prior to the meeting pursuant to 41 CFR 102–3.105(b). The meeting time and location are located below.

DATES: December 13, 2007, 10 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Greg Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, by telephone at (202) 514–1369, toll free (866) 859–2687, or by e-mail at *gregorgy.joy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer. The purpose of this meeting is to review applications for the 2006–2007 Public Safety Officer Medal of Valor Awards and to discuss upcoming activities related thereto.

This meeting will be open to the public. For security purposes, members of the public who wish to attend must register at least five (5) days in advance of the meeting by contacting Mr. Joy. All attendees will be required to sign in at the front desk. **Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least five (5) days in advance of the meeting.

Dated: November 26, 2007.

Cybele K. Daley,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. E7–23240 Filed 11–29–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Civil Rights Center within the Office of the Assistant Secretary for Administration and Management is soliciting comments concerning the proposed extension of the collection of the Compliance Information Report—29 CFR part 31 (Title VI of the Civil Rights Act), Nondiscrimination—Disability—29 CFR part 32 (section 504 of the Rehabilitation Act), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. In addition, a copy of the ICR in alternate formats of large print and electronic file on computer disk are available upon request.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 30, 2008.

ADDRESSES: Comments should be sent to Annabelle T. Lockhart, Director of the Civil Rights Center. Electronic mail is the preferred method of submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the ICR and sent to *civilrightscenter@dol.gov*. Brief comments (maximum of five pages), clearly identified as pertaining to the ICR, may be submitted by facsimile machine (Fax) to (202) 693–6505. Where necessary, hard copies of comments, clearly identified as pertaining to the ICR, may also be delivered to the Civil Rights Center Director at the U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Because of problems with U.S. Postal Service mail delivery, the Civil Rights Center suggests that those submitting comments by means of the U.S. Postal Service should place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions, whether by U.S. Postal Service, e-mail, fax transmittal, or other means will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at the telephone numbers listed below.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of the ICR will be made available, upon request, in large print or electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or obtain the ICR in an alternate format contact the Civil Rights Center at (202) 693–6500 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

FOR FURTHER INFORMATION CONTACT: Julia Tamakloe-Mankata, Civil Rights Center, (202) 693–6519 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Compliance Information Report and its information collection is designed to ensure that programs or activities funded in whole or in part by

the Department of Labor operate in a nondiscriminatory manner. The Report requires such programs and activities to collect, maintain and report upon request from the Department, race, ethnicity, sex, age and disability data for program applicants, eligible applicants, participants, terminees, applicants for employment and employees.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of the current OMB approval of the paperwork requirements in the Compliance Information Report. Extension is necessary to ensure nondiscrimination in programs or activities funded in whole or in part by the Department of Labor.

Type of Review: Extension.

Agency: Civil Rights Center, Office of the Assistant Secretary for Administration and Management.

Title: Compliance Information Report—29 CFR part 31 (Title VI), Nondiscrimination-Disability—29 CFR part 32 (section 504), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act).

OMB Number: 1225–0077.

Affected Public: State, local or Tribal governments.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintenance): $56,816.61.

Comments submitted in response to this comment request will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 20th day of November, 2007.

Annabelle T. Lockhart,

Director, Civil Rights Center.

[FR Doc. E7–23027 Filed 11–29–07; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL SCIENCE FOUNDATION

National Science Board; NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Board announces the following meeting:

Name: NSB Public Service Award Committee, #5195.

Date and Time: Thursday, December 20, 2007, 1 p.m. EST (teleconference meeting).

Place: Call will originate from the National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Jennifer Richards, Committee Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 292–7000. E-mail: *jlrichar@nsf.gov.*

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipient.

Agenda: Discussion of candidates for the NSB Public Service Award as part of the selection process.

Reason Meeting Closure: The candidate nominations being reviewed include information of a personal nature where public disclosure would constitute clearly unwarranted invasions of personal privacy. These matters are exempt from open meeting and public attendance requirements under 5 U.S.C. Appendix § 10(d) and 5 U.S.C. 552b(c)(6).

Dated: November 27, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–23212 Filed 11–29–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00341]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. STC–133, To Incorporate the Decommissioning Plan for the Defense Logistics Agency's Hammond Depot Facility in Hammond, IN

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. STC–133. This license is held by Defense Logistics Agency (the Licensee), and covers several sites around the country. The proposed action pertains to the Licensee's Hammond Depot site (the Facility), located at 3200 S. Sheffield Avenue, in Hammond, Indiana. Issuance of the amendment would incorporate the Decommissioning Plan (DP) into the license to allow completion of decommissioning activities at the site and eventual unrestricted release of the Facility. The NRC has evaluated and approved the Licensee's DP. The findings of this evaluation are documented in a Safety Evaluation Report which will be issued along with the amendment. The Licensee requested this action in a letter dated December 8, 2005. The Licensee's amendment request was noted in the **Federal Register** on February 1, 2007 (72 FR 4734). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action. No hearing requests were received. 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 December 8, 2005, license amendment request to incorporate the DP into the license, resulting in final decommissioning of the Facility and subsequent release of the Facility for unrestricted use. License No. STC–133 was issued on February 14, 1957, pursuant to 10 CFR part 40, and has been amended periodically since that time. This license authorized the Licensee to possess uranium and thorium as natural uranium and thorium mixtures as ores, concentrates and solids for the purpose of storage, sampling, repackaging and transfer for the activities of the National Defense Stockpile.

The Facility is situated on approximately 57 acres in an industrial/commercial area. The Facility consists of eight buildings of which three warehouses were used to store drums of licensed materials, several pads and ground areas where non-radioactive ore piles were stored, and unused grassy areas, wetlands and an adjacent lake. A number of paved and dirt roads, along with railroad tracks, traverse the site. Within the Facility, use of licensed materials was confined to Warehouse 100W, Warehouse 100E, Warehouse 200E and its outdoor re-packaging area, and the burn cage. Licensed activities ceased in August 2005.

Need for the Proposed Action

The proposed action is to approve the DP so that the Licensee may complete Facility decommissioning activities. Completion of the decommissioning activities will reduce residual radioactivity at the Facility. NRC regulations require licensees to begin timely decommissioning of their sites, or any separate buildings that contain residual radioactivity, upon cessation of licensed activities, in accordance with 10 CFR 40.42(d). The proposed licensing action will support such a goal. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for decommissioning that ensures protection of the public health and safety.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved the storage, repackaging and transfer of licensed material in the form of thorium nitrate, monazite sand and other ores containing source material. The licensed materials were always stored inside buildings, but were moved to other buildings and/or on and off the Facility, which resulted in some licensed materials being spilled outdoors.

The NRC staff has reviewed the Licensee amendment request for the Facility and examined the impacts of this license amendment request. Potential impacts include water resource impact (e.g., water may be used for dust control), air quality impacts from dust emissions, temporary local traffic impacts resulting from transporting debris, human health impacts, noise impacts from equipment operation, scenic quality impacts, and waste management impacts.

Based on its review, the staff has determined that no surface water or ground water impacts are expected from the decommissioning activities. Additionally, the staff has determined that significant air quality, noise, land use, and off-site radiation exposure impacts are also not expected. No significant air quality impacts are anticipated because of the contamination controls that will be implemented by the Licensee during decommissioning activities. In addition, the environmental impacts associated with the decommissioning activities are bounded by impacts evaluated by NUREG–0586, "Final Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities," (GEIS). Generic impacts for this type of decommissioning process were previously evaluated and described in the GEIS, which concludes that the environmental consequences are small. The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in NUREG–0170, "Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes." The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR 20.1301 limit of 100 mrem for a member of the public. Additionally, the Licensee estimates that approximately 270 cubic meters of low-contaminated demolition material waste and 1,120 cubic meters of low-contaminated soil will leave the site over the course of the decommissioning project. The waste will be transported from the Facility by rail car to its final destination. This proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off-site, and there is no significant increase in occupational or public radiation exposure. Thus, waste management and transportation impacts from the decommissioning will not be significant.

Occupational health was also considered in the "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes." Shipment of these materials would not affect the assessment of environmental impacts or the conclusions in the "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes."

The staff also finds that the proposed license amendment will meet the radiological criteria for unrestricted release as specified in 10 CFR 20.1402. The Licensee demonstrated this through the development of derived concentration guideline limits (DCGLs) for its Facility. The Licensee conducted site specific dose modeling using parameters specific to the Facility that adequately bounded the potential dose. This included dose modeling for two scenarios: Building surfaces and soil. The building surface dose model was based on the warehouse worker scenario and the soil dose modeling was based on a resident farmer scenario.

The Licensee will maintain an appropriate level of radiation protection staff, procedures, and capabilities, and, through its Radiation Safety Officer, will implement an acceptable program to keep exposure to radioactive materials as low as reasonably achievable (ALARA). Work activities are not anticipated to result in radiation exposures to the public in excess of 10 percent of the 10 CFR 20.1301 limits.

The NRC also evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the license amendment request, when combined with known effects on resource areas at the site, including further site remediation, are not

anticipated to result in any cumulative impacts at the site.

Environmental Impacts of the Alternatives to the Proposed Action

The only alternative to the proposed action of decommissioning the Facility 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 40.42(d) requiring that decommissioning of source material facilities be completed and approved by the NRC after licensed activities cease. The no-action alternative would keep radioactive material on-site without disposal. Additionally, denying the amendment request 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 NRC guidance and regulations. 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 Indiana, Department of the Environment for review on June 26, 2007. On November 2, 2007, Indiana State Department of Health, Radiological Emergency Response Program, responded by e-mail. The State agreed with the conclusions of the EA and otherwise had no comments.

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. NUREG–1757, "Consolidated NMSS Decommissioning Guidance;"
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"
3. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"
4. NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities"
5. Letter dated December 8, 2005 (ML053500252)
6. Historical Site Assessment (ML060580605)
7. Preliminary Site Specific Derived Concentration Guidelines (ML060580629)
8. Radiological Scoping Survey (ML060580608)
9. Environmental Assessment, Disposition of Thorium Nitrate (ML060580592)
10. Letter dated July 5, 2006 (ML061870578) and July 19, 2006 (ML062070231)
11. Radiological Characterization Survey Report (ML062710179)
12. Decommissioning/Remediation Plan (ML062760618)
13. Letter dated January 12, 2007 (ML070160372)
14. **Federal Register** Notice of Consideration (ML070250043)

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 21st day of November, 2007. For The Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–23218 Filed 11–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on December 18, 2007, 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:

Tuesday, December 18, 2007—10 a.m. until the conclusion of business

The Subcommittee will discuss the scope of long-term research the agency needs to consider. The purpose of this meeting is to 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. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

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: November 26, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch.

[FR Doc. E7–23251 Filed 11–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on December 19, 2007, 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:

Wednesday, December 19, 2007—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the draft NUREG–1855, "Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decisionmaking." The Subcommittee will hear presentations by and hold discussions with representatives of NRC staff and Electric Power Research Institute (EPRI) regarding this matter. 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. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

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: November 26, 2007.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E7–23252 Filed 11–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised Regulatory Guides: Impending Issuance, Availability

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Impending Issuance, Availability of Regulatory Guides in Divisions 3, 6, and 10.

FOR FURTHER INFORMATION CONTACT: Andrea D. Valentin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7143 or e-mail *ADW1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is currently reviewing and revising numerous guides in the agency's "Regulatory Guide" (RG) series. This series was developed to describe, and make available to the public, methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

FOR FURTHER INFORMATION CONTACT: The NRC has established 10 broad divisions of RGs. The NRC periodically revises its RGs as new guidance becomes available. In some cases, new guidance has been provided through other means (e.g., agency's NUREG reports) and the RGs have not been updated. The following list of RGs in Division 3, "Fuels and Materials Facilities," Division 6, "Products," and Division 10, "General," are now being revised to update the applicable guidance.

RG	Title
3.16	General Fire Protection Guide for Plutonium Processing and Fuel Fabrication Plants.
3.25	Standard Format and Content of Safety Analysis Reports for Uranium Enrichment Facilities.
3.38	General Fire Protection Guide for Fuel Reprocessing Plants.
3.39	Standard Format and Content of License Applications for Plutonium Processing and Fuel Fabrication Plants.
3.52	Standard Format and Content for the Health and Safety Sections of License Renewal Applications for Uranium Processing and Fuel Fabrication.
3.65	Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR Parts 30, 40, and 70.
3.66	Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72.
6.1	Leak Testing Radioactive Brachytherapy Sources.
6.2	Integrity and Test Specifications for Selected Brachytherapy Sources.
6.4	Classification of Containment Properties of Sealed Radioactive Sources.
6.5	General Safety Standard for Installations Using Nonmedical Sealed Gamma-Ray Sources.
6.9	Establishing Quality Assurance Programs for the Manufacture and Distribution of Sealed Sources and Devices Containing Byproduct Material.
10.2	Guidance to Academic Institutions Applying for Specific Byproduct Material Licensees of Limited Scope.
10.3	Guide for the Preparation of Applications for Special Nuclear Material Licenses of Less than Critical Mass.
10.4	Guide for the Preparation of Applications for Licenses to Process Source Material.
10.5	Applications for Type A Licenses of Broad Scope.
10.6	Guide for the Preparation of Applications for Use of Sealed Sources and Devices for Performing Industrial Radiography.
10.7	Guide for the Preparation of Applications for Licenses for Laboratory and Industrial Use of Small Quantities of Byproduct Material.
10.8	Guide for the Preparation of Applications for Medical Use Programs.
10.9	Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published RGs, as well as items for inclusion in RGs that are currently being developed. You may submit comments by any of the following methods:

1. Mail comments to Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (MS T–6 D59).

2. Hand-deliver comments to Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

3. Fax comments to Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, at (301) 415–5144.

4. E-mail comments to *NRCREP@nrc.gov*.

Availability and Dates

These draft revised RGs are expected to be published for review and comment

over the next 90 days. The comment period for each RG will be 60 days from the date of its posting on the NRC Web site. The NRC will make each revised RG publicly available through the following electronic distribution methods:

1. The NRC's Electronic Reading Room on the agency's public Web site, under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/*.

2. The NRC's Agencywide Documents Access and Management System (ADAMS), at *http://www.nrc.gov/reading-rm/adams.html* (using the ADAMS accession number specified in the footer on the first page of each regulatory guide).

RGs are not copyrighted, and Commission approval is not required to reproduce them. Copies of each RG and other related publicly available documents, including public comments received, can be viewed electronically on computers in the NRC's Public Document Room (PDR), which is located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21, and is open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee. If you do not have access to ADAMS or if you encounter problems in accessing the documents stored in ADAMS, contact the PDR Reference Staff at (800) 397–4209 or (301) 415–4737, or by e-mail to *PDR@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of November, 2007.

For the U.S. Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E7–23221 Filed 11–29–07; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

PBGC Flat Premium Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of flat premium rates.

SUMMARY: This notice informs the public of the PBGC flat premium rates for premium payment years beginning in 2008. These rates can be derived from information published elsewhere but are published in this notice for the convenience of the public.

DATES: The flat premium rates apply to premium payment years beginning in 2008.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates.

The Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA 2005) amended section 4006 of ERISA. DRA 2005 changed the per-participant flat premium rate for plan years beginning in 2006 from $19 to $30 for single-employer plans and from $2.60 to $8 for multiemployer plans and provided for inflation adjustments to the flat rates for future years. The adjustments are based on changes in the national average wage index as defined in section 209(k)(1) of the Social Security Act, with a two-year lag—for example, for 2008, the 2006 index is compared to the baseline (the 2004 index). The new provisions are written in such a way that the premium rate can never go down; if the change in the national average wage index is negative, the premium rate remains the same as in the preceding year. Also, premium rates are rounded to the nearest whole dollar.

The baseline national average wage index, the 2004 index, was $35,648.55. The 2006 index was $38,651.41. The ratio of the 2006 index to the 2004 index is 1.084235. Multiplying this ratio by $30.00 gives $32.53 which rounds to $33.00. Multiplying the ratio by $8.00 gives $8.67, which rounds to $9.00. Thus, the 2008 flat premium rates for PBGC's two insurance programs will be $33.00 per participant for single-employer plans and $9.00 per participant for multiemployer plans.

The PBGC will publish the flat premium rates annually for the convenience of the public.

Issued in Washington, DC, on this 27th day of November 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–23269 Filed 11–29–07; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 7d–1; SEC File No. 270–176; OMB Control No. 3235–0311

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-7(d)) (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 (17 CFR 270.7d–1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting the foreign fund's registration under the Act.

The rule requires a Canadian fund proposing to register under the Act to file an application with the Commission that contains various undertakings and agreements of the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other

obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C. 77a–77z–3), and the Securities Exchange Act of 1934 (15 U.S.C. 78a–78mm), as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act)." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These information collection requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the foreign fund's list of affiliated persons. The Commission staff estimates that the active registrant makes one response each year under the rule update its list of affiliated persons.[1] Commission staff estimates that the response to update the list of affiliated persons requires 2 hours of compliance clerk time at a cost of $56 per hour, for a total annual burden of 2 hours at a cost of $112.[2] The estimated number of 2 burden hours is a reduction of 23.25 hours from the current allocation. The reduction is a result of the registrant's elimination of duplicative records in the United States. All of the registrant's records are only maintained in the United States.

If a foreign fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a foreign fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no investment company has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

[1] The rule requires an applicant to maintain records in the United States (which, without the requirement, could be available only in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant, however, only maintains its records in the United States and in no other jurisdiction. Therefore, the registrant's maintenance of records in the United States does not impose an additional burden beyond the fund's compliance with the Act's requirements. This recordkeeping requirement is reflected in the information collection burdens applicable to those requirements for all registered funds.

[2] The $56/hour figure for a Compliance Clerk is from the SIA Report on Office Salaries in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

Dated: November 26, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23208 Filed 11–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–4; OMB Control No. 3235–0325; SEC File No. 270–288

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Form F–4 (17 CFR 239.34) is used by foreign issuers to register securities in business combinations, reorganizations and exchange offers pursuant to federal securities laws pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Form F–4 takes approximately 1,447 hours per response and is filed by approximately 68 respondents. We estimate that 25% of the 166 hours per response (361.75 hours) is prepared by the registrant for a total annual reporting burden of 24,599 hours (361.75 hours per response × 68 responses). The remaining 75% of the burden hours is attributed to outside cost.

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.

Written 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 send an e-mail to *Alexander_T._Hunt@omb.eop.gov* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 26, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23209 Filed 11–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–4 and Form 19b–4; OMB Control No. 3235–0045; SEC File No. 270–38.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 19b–4 (17 CFR 240.19b–4) and Form 19b–4—Filings with respect to proposed rule changes by self-regulatory organizations.

Section 19(b) of the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78s(b)) requires each self-regulatory organization ("SRO") to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b).

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved or if proceedings should be instituted to determine whether the proposed rule change should be disapproved.

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Twenty-two respondents file an average total of 1,279 responses per year. Each response takes approximately 23.22 hours to complete. Thus, the estimated annual response burden is 29,698 hours. At an average cost per response of $6,150.31, the resultant total related cost of compliance for these respondents is $7,866,246 per year (1,279 responses × $6,150.31/response = $7,866,246).

Compliance with Rule 19b–4 is mandatory. Information received in response to Rule 19b–4 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: November 23, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23210 Filed 11–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28065; File No. 812–13414]

John Hancock Life Insurance Company, *et al.*, Notice of Application

November 26, 2007.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of exemption pursuant to Section 17(b) of the Investment Company Act of 1940, as amended (the "1940 Act" or "Act").

Applicants: John Hancock Life Insurance Company (U.S.A.) ("John Hancock USA"), John Hancock Life Insurance Company (U.S.A.) Separate Account H ("Account H"), John Hancock Life Insurance Company of New York ("John Hancock New York"), John Hancock Life Insurance Company of New York Separate Account A ("Account A") and John Hancock Trust ("JHT") (collectively the "Applicants").

SUMMARY: The Applicants hereby apply for an order of exemption pursuant to Section 17(b) of the 1940 Act to permit in-kind purchases in connection with a substitution as described herein.

Filing Date: The application was filed on August 6, 2007 and amended and restated on November 19, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 20. 2007, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, John Hancock Life Insurance Company (U.S.A.), 601 Congress Street, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: Alison T. White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Room 1580, Washington, DC 20549 (202–551–8090).

Applicants' Representations

1. John Hancock USA, formerly known as The Manufacturers Life Insurance Company (U.S.A.), is a stock life insurance company originally organized under the laws of Maine on August 20, 1955 by a special act of the Maine legislature. John Hancock USA redomesticated under the laws of Michigan on December 30, 1992.

2. Account H is registered under the Act as a unit investment trust (File No. 811–4113). The variable annuity contracts funded by Account H that are affected by this Application are Scudder Wealthmark Annuity (File Nos. 333–70728 and 333–70730) and Scudder Wealthmark ML3 Annuity (File No. 333–70850).

3. John Hancock New York, formerly known as The Manufacturers Life Insurance Company of New York, is a wholly-owned subsidiary of John Hancock USA and is a stock life insurance company organized under the laws of New York on February 10, 1992.

4. Account A is registered under the Act as a unit investment trust (File No. 811–6584). It is used to fund variable annuity contracts of John Hancock New York. The variable annuity contracts funded by Account A that are affected by this application are Scudder Wealthmark Annuity for New York (File Nos. 33–79112 and 33–46217) and Scudder Wealthmark ML3 Annuity for New York (File No. 333–83558).

5. The individual and group variable annuity contracts affected by this Application are collectively referred to as the "Contracts."

6. Each of the Contracts permits its owners to allocate the Contract's accumulated value among numerous available Subaccounts, each of which invests in a different investment portfolio ("Fund") of an underlying mutual fund.

7. Shares of JHT are sold exclusively to insurance company separate accounts to fund benefits under variable annuity contracts and variable life insurance policies sponsored by the Insurance Companies or their affiliates, and to employer pension and profit sharing plans. JHT is registered under the Act as an open-end management investment company of the series type, and its securities are registered under the Securities Act of 1933, File Nos. 002–94157 and 811–04146. John Hancock Investment Management Services, LLC (formerly, Manufacturers Securities Services, LLC) ("JHIMS"), is the investment adviser to JHT, and each series has its own subadviser.

8. John Hancock USA and John Hancock New York (collectively the "Insurance Companies") and Account H and Account A (collectively the "Separate Accounts") previously applied for and were granted an Order of the Commission pursuant to Section 26(c) of the Act (Inv. Co. Act Rel. No. 27781, the "Section 26(c) Order") approving the substitution of shares of certain series of JHT for shares of comparable series of various registered investment companies, the majority of which were series of DWS Variable Series II. The Section 26(c) Order approved, among others, the substitution of shares of JHT Investment Quality Bond Trust—Series II of JHT (such series being referred to herein as the "Replacement Fund") for shares of DWS Core Fixed Income VIP—Series II, Class B of DWS Variable Series II (such series being referred to herein as the "Existing Fund"). All of the substitutions approved in the Section 26(c) Order, except that involving the Existing Fund and the Replacement Fund, were completed or are in the process of being completed.

9. The reason that the substitution involving the Existing Fund and the Replacement Fund has not been completed is that Deutsche Investment Management Americas Inc. ("DeIM"), the investment advisor of the Existing Fund, has informed the Insurance Companies that the redemption of the shares of the Existing Fund that are held by the Separate Accounts may be effected partly in cash and partly in-kind.

10. The Insurance Companies, on behalf of the Separate Accounts, propose to redeem the shares held by the Separate Accounts in the Existing Fund for a combination of cash and securities. The redemption will be done on a pro-rata basis. The in-kind redemption from the Existing Fund will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc.* (available December 28, 1999).

11. The Insurance Companies, after redeeming the shares held by the Separate Accounts in the Existing Fund for a combination of cash and securities, will then use such redemption proceeds to purchase shares of the Replacement Fund.

12. The Applicants request an order under Section 17(b) exempting them from the provisions of Section 17(a) to

the extent necessary to permit the Insurance Companies to carry out the proposed substitution.

13. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons acting as principals, from knowingly purchasing any security or other property from the registered company.

14. Because shares held by a separate account of an insurance company are legally owned by the insurance company, the Insurance Companies and their affiliates collectively own of record substantially all of the shares of JHT. Therefore, JHT and the Replacement Fund are arguably under the control of the Insurance Companies notwithstanding the fact that Contract owners may be considered the beneficial owners of those shares held in the Separate Accounts. If JHT and the Replacement Fund are under the control of the Insurance Companies, then each Insurance Company is an affiliated person or an affiliated person of an affiliated person of JHT and the Replacement Fund. If JHT and the Replacement Fund are under the control of the Insurance Companies, then JHT and the Replacement Fund are affiliated persons of the Insurance Companies.

15. Regardless of whether or not the Insurance Companies can be considered to control JHT and the Replacement Fund, because the Insurance Companies own of record more than 5% of the shares of each of them and are under common control with the Replacement Funds' investment adviser, the Insurance Companies are affiliated persons of JHT and the Replacement Fund. Likewise, the Replacement Fund is an affiliated person of the Insurance Companies.

16. The Insurance Companies, through their Separate Accounts, in the aggregate own more than 5% of the outstanding shares of the Existing Fund. Therefore, each Insurance Company is an affiliated person of the Existing Fund.

17. Because the substitution may be effected, in whole or in part, by means of in-kind redemptions and purchases, the substitution may be deemed to involve one or more purchases or sales of securities or property between affiliated persons. The proposed transactions will involve a transfer of portfolio securities by the Existing Fund to the Insurance Companies; immediately thereafter, the Insurance Companies, on behalf of the Separate Accounts, will purchase shares of the Replacement Fund with the portfolio securities received from the Existing Fund. Accordingly, the Insurance Companies and the Existing Fund, and the Insurance Companies and the Replacement Fund could be viewed as affiliated persons of one another under Section 2(a)(3) of the Act. It is conceivable that this aspect of the substitution could be viewed as being prohibited by Section 17(a). Therefore, the Applicants have determined to seek relief from Section 17(a) for the in-kind purchases and sales of the shares of the Replacement Fund.

18. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

19. The Applicants submit that the terms of the proposed in-kind purchases of shares of the Replacement Fund, including the consideration to be paid and received, as described in this Application, are reasonable and fair and do not involve overreaching on the part of any persons concerned. The Applicants also submit that the proposed in-kind purchases by the Insurance Companies will be consistent with the investment policies of the Replacement Fund. The Insurance Companies' redemption of the shares held by the Separate Accounts in the Existing Fund and the Insurance Companies' subsequent purchase of shares of the Replacement Fund with such redemption proceeds are scheduled to occur on the same day. The Replacement Fund may opt to sell all or a portion of such in-kind securities received. The Applicants submit that the proposed substitution is consistent with the general purposes of the Act.

20. Applicants assert that, to the extent that the in-kind purchases are deemed to involve principal transactions among affiliated persons, the procedures described below should be sufficient to assure that the terms of the proposed transactions are reasonable and fair to all participants. The Applicants maintain that the terms of the proposed in-kind purchase transactions, including the consideration to be paid and received by each fund involved, are reasonable, fair and do not involve overreaching. Applicants represent that the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. Contract owners will not suffer any adverse tax consequences as a result of the substitution. The fees and charges under the Contracts will not increase because of the substitution. Even though the Separate Accounts, the Insurance Companies and JHT may not rely on Rule 17a–7, the Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

21. The board of JHT has adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which its series may purchase and sell securities to and from their affiliates. The Applicants will carry out the proposed Insurance Company in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the Replacement Fund's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed substitution will be such as to offer the same degree of protection to the Replacement Fund from overreaching that Rule 17a–7 provides to it generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, the proposed transactions will not be effected at a price that is disadvantageous to the Replacement Fund. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each fund involved valued in accordance with the procedures disclosed in its respective registration statement and as

required by Rule 22c–1 under the Act. Any brokerage commission, fee, or other cost incurred in connection with the proposed transactions will be paid for by the Insurance Companies and not by the Contract owners.

22. The sale of shares of the Replacement Fund for investment securities, as contemplated by the proposed in-kind purchases, will be consistent with the investment policy and restrictions of the Replacement Fund because (1) the shares will be sold at their net asset value, and (2) the portfolio securities will be of the type and quality that the Replacement Fund could have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, the investment adviser and sub-adviser of the Replacement Fund will examine the portfolio securities being offered to the Replacement Fund and accept only those securities as consideration for shares that they could have acquired for the Replacement Fund in a cash transaction.

23. The Applicants submit that the Insurance Companies' in-kind purchases are consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

24. The Applicants represent that the proposed in-kind purchases meet all of the requirements of Section 17(b) of the Act and request that the Commission issue an order pursuant to Section 17(b) of the Act exempting the Separate Accounts, the Insurance Companies, JHT, and the Replacement Fund from the provisions of Section 17(a) of the Act to the extent necessary to permit the Insurance Companies on behalf of the Separate Accounts to carry out, as part of the substitution, the in-kind purchases of shares of the Replacement Fund which may be deemed to be prohibited by Section 17(a) of the Act.

Conclusion

Applicants assert that for the reasons summarized above the proposed substitution and related transactions are consistent with the standards of Section 17(b) of the Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23205 Filed 11–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56837; File No. SR–FICC–2007–10]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Replace the Mortgage-Backed Securities Division Clearing Fund Calculation Methodology With a Yield-Driven Value-at-Risk Methodology

November 26, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 31, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on September 27, 2007, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to replace the Mortgage-Backed Securities Division ("MBSD") margin calculation methodology with a Value-at-Risk ("VaR") methodology.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Clearing participants of MBSD are required to maintain participants' fund deposits. Each participant's required deposit is calculated daily to ensure enough funds are available to cover the risks associated with that participant's activities.

The purpose served by the participants fund is to have on deposit from each participant assets sufficient to satisfy any losses that may otherwise be incurred by MBSD participants as the result of the default by the participant and the resultant closeout of that participant's settlement positions.

FICC proposes to replace the current participants fund methodology, which uses haircuts and offsets, with a VaR model. FICC expects the VaR model to better reflect market volatility and to more thoroughly distinguish levels of risk presented by individual securities.

Specifically, FICC is proposing to replace the existing MBSD margin calculation with a yield-driven VaR model. VaR is defined to be the maximum amount of money that may be lost on a portfolio over a given period of time within a given level of confidence. With respect to the MBSD, FICC is proposing a 99 percent three-day VaR.

The changes to the components that comprise the current participants fund calculation versus the proposed VaR calculation in relation to the risks addressed by the components are summarized as follows:

Existing methodology	Risk addressed	Proposed methodology
Market Margin Differential, which is the greater of:. (i) the P&L Requirement or (ii) the Market Volatility Requirement	Adjusting contract price to market price and post mark-to-market fluctuations in security prices.	The sum of: (i) Mark-to-market and (ii) Interest rate or index-driven model, as appropriate.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

Existing methodology	Risk addressed	Proposed methodology
Final margin requirement generated for second processing cycle.[4]	Additional exposure due to portfolio variation ..	Margin Requirement Differential ("MRD") to include intraday portfolio variations and protection regarding late margin deficit satisfaction.
Prefunding of certain debit cash obligation items through the participants fund (no offset for credits).	Uncertainty of whether a member will satisfy its cash settlement obligation.	Prefunding of certain debit cash obligation items through the participants fund (offset for credits).[5]
N/A	Potential loss in unlikely situations beyond the model's effective range.	Coverage Component (if necessary, applies additional charge to bring coverage to the applicable confidence level).
Minimum Market Margin Differential (currently $250,000).	Maintenance of a minimum amount of collateral to support potential counterparty liquidation losses.	A minimum charge of the greater of: (i) $100,000 or (ii) a defined percentage of gross portfolio.

[3] FICC shall have the discretion to not apply the interest rate model to classes of securities whose volatility is less amenable to statistical analysis (*e.g.*, the security has a lack of pricing history). In lieu of such a calculation, the required charge with respect to such positions would be determined based on an historic index volatility model.

[4] The MBSD generates a preliminary margin report as part of a first processing cycle at the close of the business day and calculates a final margin requirement as part of a second processing cycle completed at approximately 11:30 a.m. each business day. Upon the implementation of the new VaR methodology, the MBSD would no longer generate a margin requirement as part of the second cycle. Instead, a final margin requirement would be established after the running of the first cycle at approximately 9:00 p.m.

[5] Cash obligation item credits are retained by the MBSD and not passed through to the participant. As a result, the MBSD has correspondingly less risk vis-à-vis a firm with cash obligation credits and therefore requires less collateral in this regard.

In addition, FICC may include in a participant's participant fund calculation a "special charge" as determined by FICC from time to time in view of market conditions and the financial and operational capabilities of the participant. FICC will make any such determination based on such factors as it determines to be appropriate.

Because it would become obsolete upon approval of the proposed rule change, FICC also proposes to eliminate the provision in the MBSD rules requiring participants to maintain a Basic Deposit and Minimum Market Margin Differential Deposit with MBSD pursuant to Article IV, Rule 1 (Participants Fund), section 1(a) and (b).

FICC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to FICC because it should assure the safeguarding of securities and funds in FICC's custody or control or for which it is responsible by enabling FICC to more effectively manage risk presented by participants' activities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

[6] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments have not been solicited with respect to the proposed rule change, and none have been received. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–FICC–2007–10 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–FICC–2007–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query*. 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–FICC–2007–10 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E7–23203 Filed 11–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56835; File No. SR–NYSE–2007–104]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enable the Exchange To List Certain Companies Based on Two Completed Fiscal Years and Financial Statements Covering the First Six Months of the Current Fiscal Year as Long as Prior to Listing Certain Summary Financial Data Confirms That the Company Continues To Satisfy the Applicable Standard Based on at Least Nine Completed Months of the Current Fiscal Year

November 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the earnings standard and valuation/revenue with cash flow standard of section 102.01B of the Exchange's Listed Company Manual ("Manual"). The amendment will enable the Exchange, under certain limited circumstances, to qualify companies for listing under the three-year financial requirements of those two standards on the basis of two completed fiscal years of financial statements and financial statements covering the first six months of the current fiscal year, provided that the company must include, in a public disclosure (either an SEC filing or a press release) prior to the date of listing, financial data as derived from financial statements that have been subject to a Statement of Auditing Standards 100 ("SAS 100") review that confirms that the company continues to satisfy the applicable standard based on at least nine completed months of the current fiscal year.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the earnings standard and valuation/revenue with cash flow standard of section 102.01B of the Manual. The amendment will enable the Exchange, under certain limited circumstances, to qualify companies for listing under the three-year financial requirements of those two standards on the basis of two completed fiscal years of financial statements and financial statements covering the first six months of the current fiscal year, provided that the company must include, in a public disclosure (either an SEC filing or press release) prior to the date of listing, financial data as derived from financial statements that have been subject to an SAS 100 review that confirms that the company continues to satisfy the applicable standard based on at least nine completed months of the current fiscal year.

The proposed rule change does not alter the quantitative requirements companies must meet under the Exchange's financial listing standards, but simply provides greater flexibility to certain companies in demonstrating their satisfaction of those requirements. Currently, where a company has changed its fiscal year or undergone a significant change in its operations[5] or capital structure, section 102.01C provides that such company may satisfy the earnings test or valuation/revenue with cash flow test on the basis of financial information for a nine to twelve month period in the current fiscal year in lieu of the first year in the three fiscal year period otherwise required. When qualifying a company for listing based on interim financial information from the current fiscal year, the Exchange must conclude that the company can reasonably be expected to qualify under the regular standard upon completion of its then current fiscal year. In reaching this conclusion, the Exchange considers whether the company's revenues or costs are subject to seasonal variation and the possible impact of any such variation on the suitability of predicting the company's full year performance based on its results in the first nine months of the year. In addition, if the company does not qualify under the regular standard at the end of such current fiscal year or qualify at such time for original listing under another listing standard, section 102.01C provides that the Exchange will promptly initiate suspension and delisting procedures with respect to the company.

Under the proposed amendment, the company would still need to demonstrate compliance with the relevant standard over at least nine completed months of the current fiscal year. The only distinction is that the company could demonstrate compliance through the inclusion of summary financial information for the nine-

[7] 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 types of significant changes in operations considered by the Exchange, include, but are not limited to:

- Divestiture or discontinuation of a loss-making business line,
- A change in management,
- An acquisition or series of acquisitions,
- Economies of scale and increased revenues as the company emerges from its start-up phase,
- The effect of foreign currency valuation,
- Entering a new geographic region or market or exiting a geographic region or market, or
- The launch of a new product or service.

month period—rather than full financial statements—in a public disclosure (either an SEC filing or a press release). The information for the nine-month period would be required to be derived from financial statements that have been subject to an SAS 100 review. To ensure that Exchange staff has a more complete understanding of the company's financial status, the proposed amendment requires that financial statements compliant with applicable SEC rules be available for the first six months of the period, demonstrating the company's satisfaction of the applicable financial listing standard over that period. While the proposed rule change modifies the Exchange's requirement with respect to the financial disclosure it will accept as evidence of a company's compliance with the Exchange's financial listing standards for those companies that are eligible,[6] companies listing on the Exchange will continue to be subject to the requirement to present financial statements in their SEC filings compliant with applicable SEC rules.[7]

The proposed amendment will enable the Exchange to facilitate the listing of companies that have completed at least nine months of their current fiscal year and qualify for listing on the basis of their interim results but have not yet been able to prepare full financial statements for the relevant period. Market conditions and the timing of companies' financing needs frequently make it undesirable for companies to delay their listing. As such, companies that would like to list on the Exchange, and have financial results that qualify them for listing, may occasionally feel compelled to list elsewhere because they cannot wait until work is finished on their interim financial statements. The Exchange believes that the proposed amendment will provide reasonable flexibility to enable it to list companies that find themselves in this circumstance, without in any way diluting the financial standards those companies must meet.[8]

[6] *See* note 5 *supra* and accompanying text.

[7] The Commission notes that companies listing on the Exchange will still have to meet the registration requirements of Section 12(b), and any other requirements, under the Act. *See* 15 U.S.C. 78l(b). The NYSE's proposal only alters certain time periods, and the type of financial information the Exchange would review, when considering the eligibility of these companies for listing on the Exchange under Sections 102.01C(1) and (II) of the Manual and has no effect on the financial statements, or any other information, required by the Commission.

[8] The Exchange notes that the NYSE earnings standard—both currently and as proposed to be amended by this filing—would always require a higher level of earnings in the most recently completed fiscal year than is required by Nasdaq Global Market Standard 1. The Nasdaq standard requires $1 million of earnings in either the most recent fiscal year or two of the three most recent fiscal years, so a company listing could have either: (i) $1 million of earnings in the most recently completed fiscal year with no limit as to its losses in the two preceding years or (ii) $1 million of earnings in each of the two preceding years with no limits as to losses in the most recent fiscal year. Assuming using the six/nine month exemption, the same company on NYSE would have to have either: (i) $10 million aggregate earnings in the two most recent completed fiscal years and the current partial year with at least $2 million in each of the current fiscal year and the most recent completed fiscal year and positive earnings in the preceding fiscal year or (ii) $12 million aggregate over the same period, with at least $5 million in the current fiscal year and $2 million in the most recent completed fiscal year. As such, an NYSE company listing under the earnings standard could never have less than $2 million of earnings in the most recent completed fiscal year, while a company listing under Nasdaq Global Market Standard 1 could have either $1 million of earnings or a loss. While Nasdaq has a $15 million shareholders' equity requirement that the NYSE does not have, NYSE's public float requirement of $60 million far exceeds the $8 million required by Nasdaq.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period so that the proposal becomes operative upon filing with the Commission. The Exchange states that the proposal would allow the Exchange to list those companies that have changed their fiscal year or undergone a significant change in their operations[13] if they have completed at least nine months of their current fiscal year but have not prepared full financial statements for such nine-month period.[14] The Exchange further notes that the proposal does not alter the quantitative requirements of its financial listing standards, but provides greater flexibility for companies to demonstrate they meet those requirements.

The Commission notes that the Exchange's quantitative requirements for the last fiscal year are not changing. Rather, under the proposal, the Exchange's requirements could be met in a shorter period of time and through the review of summary interim financial information. The rule specifically requires that when qualifying companies for listing based on interim financial information from the current fiscal year, the Exchange must conclude that the company can reasonably be expected to qualify under the regular standard upon completion of the companies' then current fiscal year. In reaching this conclusion, the Exchange states that it would consider whether the company's revenues or costs are subject to seasonal variation and the possible impact of any such variation on the suitability of predicting the company's full year performance based on its results for the first nine months

[9] 15 U.S.C. 78f(b)(5).

[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] *See* note 5 *supra* and accompanying text.

[14] *See* note 7 *supra*.

of the year.[15] The Commission notes that scrutinizing companies in this manner should help to ensure that only those companies that can be expected to meet the Exchange's standard will be listed. Finally, the Commission notes that companies listed under the proposal would be required to meet the existing standards of Section 102.01C of the Manual at the end of their current fiscal year or qualify at such time for original listing under another listing standard-otherwise, the Exchange would promptly initiate suspension and delisting procedures.[16] Thus, the Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–104 and should be submitted on or before December 21, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

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[15] In implementing the proposal, the Commission expects the Exchange to thoroughly review companies for any such variations.

[16] *See* proposed Sections 102.01C(I)(2) and 102.01C(II) of the Manual.

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56838; File No. SR–NYSEArca–2007–118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Certain Requirements Relating o Indexes Underlying Equity Index-Linked Securities

November 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6) to amend certain requirements relating to indexes underlying Equity Index-Linked Securities.[3] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(d) currently provides that each Equity Reference Asset (i) must be calculated based on either a capitalization, modified capitalization, price, equal-dollar, or modified equal-dollar weighting methodology, and (ii) if based upon the equal-dollar or modified equal-dollar weighting method, must be rebalanced at least quarterly. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(d) to delete the requirement that the Equity Reference Asset used in connection with an issuance of Equity Index-Linked Securities must be calculated based on either a capitalization, modified capitalization, price, equal-dollar, or modified equal-dollar weighting

[3] The Exchange defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (each such index, an "Equity Reference Asset"). *See* NYSE Arca Equities Rule 5.2(j)(6).

methodology. In addition, the Exchange proposes to provide that Equity Reference Assets based upon the equal-dollar or modified equal-dollar weighting method must be rebalanced at least semiannually, rather than quarterly, as is currently the case.

The Exchange states that the elimination of the limitations as to weighting methodologies permitted for Equity Reference Assets underlying Equity Index-Linked Securities would make NYSE Arca Equities Rule 5.2(j)(6) consistent with the Equity Index-Linked Securities listing standards of other national securities exchanges, such as the New York Stock Exchange LLC ("NYSE"),[4] which has no such requirements. The Exchange further states that a significant number of currently existing equity indexes that utilize the equal-dollar or modified equal-dollar weighting methodology are rebalanced semiannually rather than quarterly. Because the issuer of Equity Index-Linked Securities generally licenses the right to utilize the underlying index from a third-party index sponsor, it is often not within the issuer's control to have the index rebalanced more frequently. As such, it is not possible currently to list Equity Index-Linked Securities under NYSE Arca Equities Rule 5.2(j)(6) based on such indexes. The Exchange believes, however, that, because these types of indexes are relatively common and detailed information concerning the procedures governing the construction of the underlying index will be available to investors either in the issuer's prospectus or on the index sponsor's Internet Web site, it would be appropriate to allow investors to make their own decisions as to the sufficiency of a semiannual rebalancing of an equal-dollar or modified equal-dollar index underlying an issuance of Equity Index-Linked Securities. The Exchange further states that investors and issuers would benefit from NYSE Arca's ability to list, without delay, Equity Index-Linked Securities based on a broader group of such indexes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSEArca–2007–118 and should be submitted on or before December 21, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal to delete the requirement that the Equity Reference Asset be calculated based on certain specified methodologies would conform the Exchange's requirements to the current listing standards for Equity Index-Linked Securities of another national securities exchange.[10] The Commission further believes that the proposal to require Equity Reference Assets that are based on the equal-dollar or modified equal-dollar weighting methods to be rebalanced at least semiannually should benefit investors by providing a wider

[4] *See* Section 703.22 of the NYSE Listed Company Manual.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 4.

selection of derivative products based on such Equity Reference Assets. The Commission believes that the proposal to adjust the minimum rebalancing frequency requirement is reasonable, given the increasing number of equal-dollar or modified equal-dollar weighted indexes that are rebalanced on a semiannual-basis, and should allow for the listing and trading of certain Equity Index-Linked Securities that would otherwise not be able to be listed and traded on the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. With respect to the deletion of the provision requiring Equity Reference Assets to be based on certain specified calculation methodologies, the Commission notes that it has approved the deletion of a similar requirement under NYSE listing standards for Equity Index-Linked Securities [11] and does not believe that this proposal raises any novel regulatory issues. With respect to the Exchange's proposal to adjust the minimum rebalancing frequency for certain Equity Reference Assets, accelerating approval of this proposal should benefit investors by providing, without undue delay, additional Equity Index-Linked Securities products for investors and fostering competition in the market for such products. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2007–118) be, and it hereby is, approved on anaccelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E7–23204 Filed 11–29–07; 8:45 am]

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[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or emailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Request for Review of Hearing Decision/Order—20 CFR 404.967–404.981, 416.1467–416.1481—0960–0277.* The HA–520 is needed in order to afford claimants their statutory right under the Social Security Act and implementing regulations to request review of an Administrative Law Judge's (ALJ) hearing decision or dismissal of a hearing request on title II and title XVI claims. An individual may request Appeals Council review by filing a written request. A completed HA–520 ensures that SSA receives the information necessary to establish that the claimant filed the request for review within the prescribed time, and that the claimant has completed the requisite steps to permit review by the Appeals Council. The Appeals Council also uses the information to document the claimant's reason(s) for disagreeing with the ALJ' s decision or dismissal, to determine whether the claimant has additional evidence to submit, and to determine whether the claimant has a representative or wants to appoint one. The respondents are claimants requesting review of an ALJ's decision or dismissal of hearing on Social Security.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 16,667 hours.

2. *Epidemiological Research Report—20 CFR 401.165—0960–0701.* Section 311 of the Social Security Independence and Program Improvements Act of 1994 directed SSA to provide support to health researchers involved in epidemiological research. Specifically, when a study is determined to contribute to a national health interest, SSA will furnish information to determine whether a study subject is shown on the SSA administrative records as being alive or deceased (vital status). SSA will recoup all expenses incurred in providing this information. Web-posted questions solicit the information SSA needs to provide the data and to collect the fees. The requestors are scientific researchers who are applying to receive vital status information about individuals from Social Security administrative data records.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 60 hours.

3. *Work Activity Report (Self-Employed Person)—20 CFR 404.1520(b), 404.1571–404.1576, 404.1584–404.1593, and 416.971–416.976—0960–0598.* The information on Form SSA–820–F4 is used by SSA to determine initial or continuing eligibility for Supplemental Security Income (SSI) or Social Security disability benefits. Under titles II and XVI of the Act, applicants for disability

benefits must prove an inability to perform any kind of Substantial Gainful Activity (SGA) generally available in the national economy for which they might be expected to qualify on the basis of age, education, and work experience. SSA needs to secure information about this work in order to ascertain whether the applicant was (or is) engaging in SGA. Work after a claimant becomes entitled can cause the cessation of disability benefits. The information obtained from form SSA–820–F4 is needed to determine if a cessation of benefits should occur. The respondents are applicants and claimants for SSI or Social Security disability benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 50,000 hours

4. *Student Reporting Form—20 CFR 404.352(b)(2), 404.368, 404.415, 404.434, 422.135—0960–0088.* The information collected by form SSA–1383 is used by SSA to determine the impact of reported events on Social Security student beneficiaries' continuing entitlement to these benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

5. *Electronic Death Registration (EDR)—20 CFR 404.301; 404.310–311; 404.316; 404.330–341;404.350–352; and 404.371; 416.912—0960–0700.* SSA has contracted with the States to obtain death certificate information in order to compare it to SSA's payment files. This match ensures the accuracy of our payment files by detecting unreported or inaccurate dates of deaths of beneficiaries. Entitlement to retirement, disability, wife's, husband's or parent's benefits under the provisions of the Social Security Act terminates when the beneficiary dies.

Type of Request: Extension of an OMB-approved information collection.

Collection format	Number of respondents	Frequency of responses	Average cost per record request	Estimated nnual cost burden
State Death Match—Manual Process	35	50,000 per State	$0.72	$1,260,000
State Death Match—Electronic Death Registration (EDR).	18	50,000 per State	2.58	2,322,000
Totals	53			3,582,000

Estimated Annual Cost for all respondents:

**Please note that both of these data matching processes are entirely electronic and there is no hourly burden for the respondent to provide this information. The cost burdens are based on the four cost components incurred by the respondents:

—software
—hardware
—average annual salaries of database management personnel
—average annual salaries of support personnel

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Request for Evidence from Doctor or Hospital—20 CFR 404 Subpart I and 20 CFR 416 Subpart P—0960–0722.* Claimants are required to provide medical evidence of their impairment(s) in pursuing a disability claim under titles II and XVI of the Social Security Act. The HA–66 and HA–67 will be used by adjudicators of the Office of Disability Adjudication and Review (ODAR), the component of the Social Security Administration (SSA) that oversees the Administrative Law Judge (ALJ) hearing level. The letters will be used to request medical evidence from medical and other sources the claimant identifies as having information relative to his or her impairments or ability to do work-related activities. The respondents are doctors and hospitals where the claimant has been evaluated.

Type of Request: Revision of an OMB-approved information collection.

Form type	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Request for Evidence from a Doctor (HA–66)	10,000	20	15	50,000
Request for Evidence from a Hospital (HA–67)	10,000	20	15	50,000
Totals	20,000			100,000

2. *Development for Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 404.327, 404.328, and 416.1338(c) and (d) 416.1320(d), 416.1331(a)–(b), and 416.1338–0960–0282.* State Disability Determination Services must determine if a recipient of disability benefits whose disability has ceased but who is enrolled in a vocational rehabilitation program can continue to receive SSA benefits. To do this, information is needed about the beneficiary, the type of program he/she is enrolled in, and the types of services the beneficiary is receiving under the auspices of that program. Form SSA–4290 is used to collect this information. The respondents are State employment networks, vocational rehabilitation agencies, or other providers of education/job training services.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,000.

Frequency of Response: 1

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 750 hours.

3. *Medical Report (Individual with Childhood Impairment)—20 CFR 404.1512–.1515 and 416.912–.915 & 20 CFR 422.125—0960–0102.* The information collected on form SSA–3827 is used by SSA to determine the childhood claimant's physical status prior to making a disability determination and to document the childhood disability claims folder with the medical evidence. The respondents are members of the medical community, and include physicians, hospital directors, medical records librarians, and other medical personnel.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 6,000 hours.

4. *Disability Hearing Officer's Report of Disability Hearing (DC)—SSA–1204–BK—0906–0507.* The information collected on form SSA–1204–BK is used by the Disability Hearing Officer (DHO) to conduct and document disability hearings, and to provide a structured format that covers all conceivable issues relating to SSI claims for disabled children. The completed SSA–1204–BK will aid the DHO in preparing the disability decision and will provide a record of what transpired in the hearing. The respondents are DHO's in the State Disability Determination Services.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 2,000 hours.

5. *Application for Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960–0696.* Medicare Part D, codified in 20 CFR 418, provides voluntary prescription drug coverage of premium, deductible, and co-payment costs for certain low-income individuals. As per 20 CFR 418.3101, beneficiaries who meet eligibility criteria may receive help with these Medicare Part D costs. The Social Security Administration, which helps to administer the subsidy program, uses form SSA–1020 (the Application for Help with Medicare Prescription Drug Plan Costs) and its online equivalent, the i1020, to collect information that will be used to make Medicare Part D subsidy determinations. The respondents are eligible beneficiaries who want to apply for help with Medicare Part D costs.

Type of Request: Extension of an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–1020 (paper application form)	2,545,716	1	35	1,485,001
i1020 (online equivalent)	380,394	1	45	285,296
Totals	2,926,110			1,770,297

Notes: (1) When SSA published the 60-day Notice for this collection on September 14, 2007 at 72 FR 52594, we described this as a revision. However, since that time OMB has determined that our proposed revisions were non-substantive in nature and has approved them. We are therefore now listing this collection as an extension. A list of the non-substantive changes SSA made are available if the public requests them. (2) The number of respondents completing the i1020 is greater and the number of respondents using the paper SSA–1020 is less than the numbers reported in the 60-day **Federal Register** Notice for this collection. The reason for this change is that SSA received updated data on the percentage of respondents using the i1020 since the 60-day **Federal Register** Notice published.

6. *Appeal of Determination for Help with Medicare Prescription Drug Plan Costs—0960–0695.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; MMA) established a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and/or co-payment costs. Form SSA–1021, the Appeal of Determination for Help with Medicare Prescription Drug Plan Costs, was developed to obtain information from individuals who appeal SSA's decisions regarding eligibility or continuing eligibility for a Medicare Part D subsidy. The respondents are applicants who are appealing SSA's eligibility or continuing eligibility decisions.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 12,500 hours.

Dated: November 26, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–23253 Filed 11–29–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5999]

Termination of Statutory Debarment and Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act, for Morris Rothenberg & Son, Inc. (d/b/a ROTHCO)

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has terminated the statutory debarment against Morris Rothenberg & Son, Inc. (d/b/a ROTHCO) pursuant to section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(g)(4)).

EFFECTIVE DATE: November 20, 2007.

FOR FURTHER INFORMATION CONTACT: David C. Trimble, Director Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2807.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA (22 U.S.C. 2778) prohibits the issuance of export licenses to a person, if that person or any party to the export has been convicted of violating section 38 of the AECA and

certain other U.S. criminal statutes enumerated at section 38(g)(1)(A) of the AECA. A person convicted of violating the AECA is also subject to statutory debarment under section 127.7 of the ITAR.

In July 1999, ROTHCO was convicted of violating the AECA and the ITAR (U.S. District Court, District of Connecticut, 3:04CR 149–JBA). Based on this conviction, ROTHCO was statutorily debarred pursuant to section 127.7 of the ITAR and, thus, prohibited from participating directly or indirectly in exports of defense articles and defense services. Notice of debarment was published in the **Federal Register** (67 FR 10033, March 5, 2002).

In accordance with section 38(g)(4) of the AECA, statutory debarment may be terminated after consultation with the other appropriate U.S. agencies and after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. The Department of State, after consultation with other agencies, has determined that ROTHCO has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns. Therefore, the debarment against ROTHCO is rescinded, effective November 20, 2007.

Dated: November 20, 2007.

Stephen D. Mull,

Acting Assistant Secretary of State, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E7–23305 Filed 11–29–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Christian, Shelby, Fayette, Marion, Clinton, Jefferson and Washington Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Christian, Shelby, Fayette, Marion, Clinton, Jefferson, and Washington Counties, Illinois.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Christine Reed, P.E., Deputy Director of Highways, Region 4 Engineer, District 7, Illinois Department of Transportation, 400 W. Wabash, Effingham, Illinois 62401, Phone: (217) 342–8201.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve US Route 51 located in the Illinois counties of Christian. Shelby, Fayette, Marion, Clinton, Jefferson, and Washington. The proposed improvement would involve the expansion of the existing 70-mile roadway facility between CR 900 N (South of Pana) to CR 2150 N (East of Irvington).

Improvements to the corridor are considered necessary due to increases in traffic volumes, operational issues, and State economic initiatives. Alternatives that may be considered include (1) taking no action; (2) combining the existing two-lane highway with widening to four lanes on existing and/or new location; and (3) constructing a four-lane highway on new location.

Improvements to US 51 have the potential to affect agricultural, biological, historical, and natural resources within the corridor. The corridor contains moderately prime farmland in rural areas. A nature preserve exists along the abandoned railroad right-of-way north of Ramsey and the palustrine wetlands of the Kaskaskia River basin area may be habitat for plant and animal species listed by State and Federal endangered and threatened wildlife and plants programs. The Kaskaskia drainage basin has potential to contain prehistoric archaeological sites. Historical resources located along US 51 include the Vandalia Statehouse and the First Presbyterian church in Vandalia. Hazardous waste sites exist within the corridor, including the Sandoval zinc smelter site and several tank farms east of US 51 near Patoka. In the urban limits of the corridor, residential areas adjacent to US 51 may be affected.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A public scoping meeting is planned for January 2008 and agency scoping meeting is planned for February 2008. Due to the length of the corridor, public meetings will be held in each region; north, central, and south. The first public meetings will take place in January 2008. Illinois' Context Sensitive Solutions (CSS) process will be used for public involvement. The project Web site is *www.US51-IDOT.com*. In addition to the public meetings, a public hearing and comment period will be held following the release of the Draft EIS. Public notice will be given for the time and place of the public meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 26, 2007.

Norman R. Stoner,

P.E., Division Administrator, Springfield, Illinois.

[FR Doc. 07–5881 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–0069]

Electronic Signatures on Documents: Verigo, Incorporated (Verigo), Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The FMCSA announces that it has received from Verigo, Incorporated (Verigo) an application for an exemption from the signature requirement for a driver on the record of duty status (RODS). Verigo's application is being made on behalf of all drivers and carriers operating commercial motor vehicles in the U.S. and using the Verigo Wireless Logbook. The exemption would allow a signature entered on an electronic "signature pad" to be the functional equivalent of a handwritten signature on the RODS. Verigo states that this will allow the trucking industry to reduce administrative costs and increase productivity by providing a simple and effective alternative to paper RODS. The FMCSA requests public comment on Verigo's application for exemption.

DATES: Comments must be received on or before December 31, 2007.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2007–0069 by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Transportation Specialist, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations. Telephone: 202–366–4325. E-mail: *MCPSD@fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the conducting of any safety analyses. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying, or, in the alternative, the specific person or class of persons receiving, the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Verigo, a software developer headquartered in Edmonton, Alberta, Canada, manufactures a wireless record-of-duty-status (RODS) ("logbook") and trip-inspection report system that is currently used by Canadian motor carriers and drivers. This system uses a software program operating on a "pocket-PC" cellular telephone with a touch screen, which, according to Verigo, provides a very simple method for drivers to create the RODS. Verigo states that this system reduces the driver and motor carrier compliance "burden" of the hours of service (HOS) regulations by automating five of the six manual RODS processes, as drivers are only required to make simple touch screen entries to complete each step. The software program makes all calculations, provides an onscreen display that meets the requirements for roadside inspectors, and e-mails a copy of the driver's daily RODS to the motor carrier or any other person authorized by the driver to receive a copy. The Wireless Logbook System includes an automatic change-over feature between Canadian and U.S. HOS rules when the driver makes a border-crossing entry.

Verigo is applying for a 2-year exemption from 49 CFR 395.8(f)(2). This section requires entries made by the driver on the RODS to be legible and in the driver's own handwriting. Verigo is requesting the exemption for all users of their Verigo Wireless Logbook. The total number of units to be operated under the exemption is unknown as they are a service provider for an indeterminate number of motor carriers with various fleet sizes.

Verigo requests the exemption from the requirement to print and sign the daily RODS by accepting either an on-screen display or an e-mail or fax copy of the document, all of which have been certified by capturing the driver's own handwriting on the signature pad that is embedded in the "pocket PC" device. The touch screen—with an embedded signature pad—allows the driver to sign each RODS in his or her own handwriting. The device also allows inspectors and enforcement officers to view up to 14 previous days' RODS, or to obtain printed copies at the roadside via e-mail.

Verigo believes that the requested exemption is administrative in nature and does not affect the limits on driving time and on-duty time. An equivalent or greater level of safety would be achieved by using the device because of its ability to simplify and encourage regulatory compliance. According to Verigo, the wireless logbook deters falsification. The time-line on the grid sheet is plotted by the software program, and once the driver has selected a duty status, all time spent doing that task is recorded and stored. The driver may edit the record, but the time of the original data entry and all modifications are recorded and cannot be changed. This results in a "dual data stream" of original and modified entries that can be displayed on the screen. Modifications to entries are not permitted after the RODS is signed. New information may be added to the RODS after the signature time-stamp, but it must be signed before it can be sent to the server for distribution to the motor carrier or the roadside inspector. Verigo states that its logbook program replicates and automates all of the functions of paper RODS. The program provides a significantly higher and faster level of

information feedback, which allows drivers and dispatchers to proactively plan trips in advance of commencing them and to make adjustments to trips as unplanned events that impact the driver's work schedule occur.

According to Verigo, if its application for exemption is denied, the trucking industry will lose an opportunity to become more efficient and cost-effective in complying with the HOS regulations. The use of Verigo's technological solution will allow the industry to reduce administrative costs and increase productivity by providing a simple and effective alternative to paper RODS. Verigo therefore requests that an exemption be granted for a period of 2 years, with the possibility of renewal. A copy of Verigo's exemption application is in the docket identified at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Verigo's application for an exemption. The Agency will consider all comments received by close of business on December 31, 2007. Comments will be available for examination in the docket at the location listed under the "Addresses" section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

Issued on: November 26, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–23245 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Mount Vernon Terminal Railway, Inc.

[Docket Number FRA–2007–29238]

Mount Vernon Terminal Railway, Inc. (MVT) of Clear Lake, Washington, seeks a waiver of compliance from Safety Glazing Standards 49 CFR 223.11, "*Requirements for existing locomotives.*" The petitioner operates a 1953, vintage switching, Locomotive Number 1200, 2 to 3 times a week over ½ mile of main track and ½ mile of sidings and spurs at a speed not to exceed 10 miles per hour. The railroad states they have operated locomotives under the same conditions as requested since 1939, without a single glazing incident.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA–2007–29238) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on November 26, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–23199 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

SMS Lines

[Waiver Petition Docket Number FRA–2007–0007]

The SMS Lines (SMS), a Class III railroad, seeks a waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) § 223.11 *Requirements for existing locomotives.* SMS has operated within the Pureland Industrial Park in Bridgeport, Gloucester County, New Jersey since June, 1994. The petitioner proposes to use three switching type locomotives numbers 102, 308, and 309 on a limited reserve basis for yard and local switching service.

SMS Locomotives Number 102, model DS 4–4–750 was built in 1951, 308 model S–12 was built in 1953, and 309 model S–12 was built in 1952, by the Baldwin Locomotive Works (BLW). They would operate over approximately 5 miles of track with four grade crossings within the Industrial Park at Bridgeport, New Jersey, and one grade crossing at the Valery Refinery in Paulsboro, New Jersey. Current operations average 1 train per day, 6 days per week, year-round at each location operating at restricted speed, as all track is FRA Class I (10 mph).

The petitioner believes that this locomotive can be safely operated throughout the industrial park and refinery with the current non-compliant safety-type glazing. The cost to the SMS for installation of all new window frames and compliant FRA Types I and II glazing is significant, with only a

marginal increase in safety due to the low speed. Historically, railroad glazing has not been vandalized within the Pureland Industrial Park or the Valero Refinery, and there are no overhead bridges or tunnels.

All three locomotives are in reserve status, and only used when the regularly assigned locomotives are unavailable due to inspection or repair. SMS plans to upgrade the glazing in all three locomotives to compliant FRA Types I and II material as they are overhauled and repainted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (i.e., Waiver Petition Docket Number FRA–2007–0007) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on November 26, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–23200 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2007–29295]

Applicant: R. J. Corman Railroad, Mr. J. D. Boles, Manager of Signals, 101 McKenna Way, Bardstown, Kentucky 40004.

The R. J. Corman Railroad seeks approval of the proposed discontinuance and removal of two operative approach signals. The operative approach signals are located at each end of the R. J. Corman Railroad, Central Kentucky Line Old Road Subdivision, one approaching CSX Transportation's (CSXT) CP North Cabin, Milepost VB 113.8, Winchester, Kentucky, and one approaching CSXT's CP HK Tower, Milepost W12.5, Anchorage, Kentucky. Signal 1128 is located within yard limits, and is approaching North Cabin CP. Signal 131 is approaching HK Tower CP. It is proposed to replace each signal with a permanent fixed sign. The reason for the proposed changes is that present day operation does not warrant need or retention of operative approach signals.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket No. FRA–2007–29295) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on November 26, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–23201 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–27181 (Notice No. 07–11)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before January 29, 2008.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2007–27181) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that comments received will be posted without change to: *http://www.regulations.gov.* including any personal information provided.

Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Testing, Inspection and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 173.301 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following conduct of tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. These requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

Affected Public: Fillers, owners, users and retesters of reusable cylinders.

Recordkeeping:

Number of Respondents: 139,352.
Total Annual Responses: 153,287.
Total Annual Burden Hours: 168,431.
Frequency of collection: On occasion.

Title: Approvals for Hazardous Materials.

OMB Control Number: 2137–0557.

Summary: Without these requirements there is no means to: (1) Determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.; (2) verify that various containers and special loading requirements for vessels meet the requirements of the HMR; and (3) assure that regulated hazardous materials pose no danger to life and property during transportation.

Affected Public: Businesses and other entities who must meet the approval requirements in the HMR.

Recordkeeping:

Number of Respondents: 10,723.
Total Annual Responses: 11,074.
Total Annual Burden Hours: 25,605.
Frequency of collection: On occasion.

Title: Rail Carrier and Tank Car Tank Requirements.

OMB Control Number: 2137–0559.

Summary: This information collection consolidates and describes the information provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The types of information collected include:

(1) *Approvals of the Association of American Railroads (AAR) Tank Car Committee:* An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) *Progress Reports:* Each owner of a tank car that is required to be modified to meet certain requirements specified in § 173.31 must submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) *FRA Approvals:* An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank

car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. Also an FRA approval is required for the movement of any tank car that does not conform to the applicable requirements in the HMR. These latter movements are currently being reported under the information collection for exemption applications.

(4) *Manufacturer Reports and Certificate of Construction:* These documents are prepared by tank car manufacturers and used by owners, users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) *Quality Assurance Program:* Facilities that build, repair, and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) *Inspection Reports:* A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Recordkeeping:

Number of Respondents: 266.
Total Annual Responses: 16,782.
Total Annual Burden Hours: 2,689.
Frequency of collection: Annually.

Title: Inspection and Testing of Meter Provers.

OMB Control Number: 2137–0620.

Summary: This information collection and recordkeeping burden is the result of efforts to eliminate exemptions that are no longer needed and incorporate the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded involving bulk packagings, such as cargo tanks and portable tanks. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material, and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every five years in order to ensure they are properly working as specified in § 173.5a of the FHMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every five years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with § 180.415(b) and in accordance with § 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Recordkeeping:

Number of Respondents: 50.
Total Annual Responses: 250.
Total Annual Burden Hours: 175.
Frequency of collection: On occasion.

Title: Requirements for United Nations (UN) Cylinders.

OMB Control Number: 2137–0621.

Summary: This information collection and recordkeeping burden is the result of efforts to amend the HMR to adopt standards for the design, construction, maintenance and use of cylinders and multiple-element gas containers (MEGCs) based on the standards contained in the United Nations (UN) Recommendations on the Transport of Dangerous Goods. Aligning the HMR with the UN Recommendations promotes flexibility, permits the use of technological advances for the manufacture of the pressure receptacles, provides for a broader selection of pressure receptacles, reduces the need for exemptions, and facilitates international commerce in the transportation of compressed gases. Information collection requirements address domestic and international manufacturers of cylinders that request approval by the approval agency for cylinder design types. The approval process for each cylinder design type includes review, filing, and recordkeeping of the approval application. The approval agency is required to maintain a set of the approved drawings and calculations for each design it reviews and a copy of each initial design type approval certificate approved by the Associate Administrator for not less than 20 years.

Affected Public: Fillers, owners, users, and retesters of UN cylinders.

Recordkeeping:

Number of Respondents: 50.
Total Annual Responses: 150.
Total Annual Burden Hours: 900.
Frequency of collection: On occasion.

Issued in Washington, DC, on November 26, 2007.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. E7–23244 Filed 11–29–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35101]

Chicago Terminal Railroad—Lease and Operation Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway

Chicago Terminal Railroad (CTR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from the Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR) and to operate approximately 3.47 miles of track within the Bensenville Industrial Park, originating at and connecting to a switch at milepost B–2 along CPR's line of rail in Bensenville, IL.[1] Iowa Pacific Holdings, LLC owns CTR through its wholly owned subsidiary Permian Basin Railways, Inc.[2]

[1] CTR states that it expects to execute an agreement shortly with CPR for the lease and operation of the rail property.

[2] *See Iowa Pacific Holdings, LLC and Permian Basin Railways, Inc.—Continuance in Control Exemption—Chicago Terminal Railroad*, STB Finance Docket No. 34967 (STB served Dec. 22, 2006).

CTR certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

The transaction is expected to be consummated on or after December 16, 2007, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 7, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35101, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1750 K Street NW., Suite 350, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 20, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–23180 Filed 11–29–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Interagency Charter and Federal Deposit Insurance Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before January 29, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, and NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Community Reinvestment Act.

OMB Number: 1550–0005.

Form Number: 138 and 1623.

Regulation requirement: 12 CFR Parts 516, 543 and 552.

Description: Organizers of a Federal savings association must file an Interagency Charter and Federal Deposit Insurance Application for permission to organize with the Office of Thrift Supervision (OTS). The submission is required to establish a Federal savings association or a Federal savings bank, and the issuance of a Federal charter.

OTS analyzes each information collection to determine whether to approve the proposed application for a Federal charter

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Frequency of Response: On occasion.

Estimated Time per Response: 125 hours.

Estimated Total Burden: 2,500 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: November 23, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–23263 Filed 11–29–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Notice of Hiring or Indemnifying Senior Executive Officers or Directors

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before January 29, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Notice of Hiring or Indemnifying Senior Executive Officers or Directors.

OMB Number: 1550–0047.

Form Number: 1606.

Regulation requirement: 12 CFR 545.121.

Description: Pursuant to 12 U.S.C. 1817(j), persons who proposed to acquire control of a savings association or savings and loan holding company must provide prior written notice to the Office of Thrift Supervision (OTS). That notice will now be made on the "Interagency Notice of Change in Director or Senior Executive Officer" and supplemented, as necessary, by information on the "Interagency Biographical and Financial Report." Required notices must include at a minimum the information described in 12 U.S.C. 1817(j)(6)(A).

OTS is required to make a determination as to the hiring or appointment of senior executive officers or directors at savings institutions or thrift holding companies. The OTS's determination must be based upon an evaluation of the individual's competence, experience, character, and integrity. The information required by the collection is necessary to make this determination. Without this information, the OTS cannot accomplish the statutory requirement designed to protect the interests of the Savings Association Insurance Fund.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 886.

Estimated Number of Responses: 886.

Estimated Frequency of Response: Other: As required per transaction.

Estimated Total Burden: 5,149 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: November 23, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–23264 Filed 11–29–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Operating Subsidiary

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 31, 2007. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain*.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Operating Subsidiary.

OMB Number: 1550–0077.

Form Number: OTS Form 1579.

Description: OTS analyzes the information contained in the notice or application to determine if the savings association is in compliance with applicable statutes, regulations and policies. If the information were not

collected, OTS would not be able to properly evaluate whether the proposed operating subsidiary, or proposed activity in an existing subsidiary, meets applicable statutory and regulatory requirements.

Type of Review: Extension without change of currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 68.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 14 hours.

Estimated Total Burden: 952 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: November 23, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–23295 Filed 11–29–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0655]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 31, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0655" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0655."

SUPPLEMENTARY INFORMATION:

Title: Residency Verification Report-Veterans and Survivors, VA Form Letter 21–914.

OMB Control Number: 2900–0655.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form Letter 21–914 is use to verify whether Filipino veterans of the Special Philippine Scouts, Commonwealth Army of the Philippines, organized guerilla groups receiving service-connected compensation benefits and survivors receiving service connected death benefits at the full-dollar rate, actually resides in the United States as United States citizens or as aliens lawfully admitted for permanent residence. The information is needed to determine whether the claimant continues to meet the United States residency requirements.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 12, 2007, at pages 52199–52200.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,250.

Dated: November 26, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23231 Filed 11–29–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0521]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 31, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0521" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0521."

SUPPLEMENTARY INFORMATION:

Titles: a. Report and Certification of Loan Disbursement, VA Form 26–1820.

b. Request for Verification of Employment, VA Form 26–8497.

c. Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0521.

Type of Review: Revision of a currently approved collection.

Abstract: Lenders must obtain specific information concerning a veteran's credit history in order to properly underwrite the veteran's loan. VA loans may not be guaranteed unless the veteran is a satisfactory credit risk. The data collected on the following forms are used to ensure that applications for VA-guaranteed loans are underwritten in a reasonable and prudent manner.

a. VA Form 26–1820 is completed by lenders closing VA guaranteed and insured loans under the automatic or prior approval procedures.

b. VA Form 26–8497 is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. VA does not require the exclusive use of this form for verification purposes, any alternative verification document would be acceptable provided that all information requested on VA Form 26–8497 is provided.

c. Lenders making guaranteed and insured loans complete VA Form 26–

8497a to verify the applicant's deposits in banks and other savings institutions.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 19, 2007, at pages 53620–53621.

Affected Public: Business or other for profit.

Estimated Annual Burden: 75,000 hour.

a. Report and Certification of Loan Disbursement, VA Form 26–1820—50,000 hours.

b. Request for Verification of Employment, VA Form 26–8497—16,667 hours.

c. Request for Verification of Deposit, VA Form 26–8497a—8,333 hours.

Estimated Average Burden Per Respondent:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—15 minutes.

b. Request for Verification of Employment, VA Form 26–8497—10 minutes.

c. Request for Verification of Deposit, VA Form 26–8497a—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400,000.

a. Report and Certification of Loan Disbursement, VA Form 26–1820—200,000.

b. Request for Verification of Employment, VA Form 26–8497—100,000.

c. Request for Verification of Deposit, VA Form 26–8497a—100,000.

Dated: November 26, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23232 Filed 11–29–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 31, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0500" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0500."

SUPPLEMENTARY INFORMATION: *Title:* Status of Dependents Questionnaire, VA Form 21–0538.

OMB Control Number: 2900–0500.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans receiving compensation for service-connected disability which includes an additional amount for their spouse and/or child(ren) complete VA Form 21–0538 to certify the status of the dependents for whom additional compensation is being paid.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 12, 2007, at pages 52200–52201.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,083 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once every eight years.

Estimated Number of Respondents: 84,500.

Dated: November 26, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–23233 Filed 11–29–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
November 30, 2007

Part II

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, and 274
Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release Nos. 33–8861; IC–28064; File No. S7–28–07]

RIN 3235–AJ44

Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933 in order to enhance the disclosures that are provided to mutual fund investors. The proposed amendments, if adopted, would require key information to appear in plain English in a standardized order at the front of the mutual fund statutory prospectus. The Commission is also proposing rule amendments that would permit a person to satisfy its mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site. Upon an investor's request, mutual funds would also be required to send the statutory prospectus to the investor. The proposals are intended to improve mutual fund disclosure by providing investors with key information in plain English in a clear and concise format, while enhancing the means of delivering more detailed information to investors.

DATES: Comments should be submitted on or before February 28, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–28–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–28–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/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, on official business days between the hours of 10 am and 3 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel; Sanjay Lamba, Senior Counsel; Tara R. Buckley, Branch Chief; or Brent J. Fields, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5720.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to rules 159A,[1] 482,[2] 485,[3] 497,[4] and 498[5] under the Securities Act of 1933 ("Securities Act") and rules 304[6] and 401[7] of Regulation S–T.[8] The Commission is also proposing for comment amendments to Form N–1A,[9] the form used by open-end management investment companies to register under the Investment Company Act of 1940 ("Investment Company Act") and to offer securities under the Securities Act; Form N–4,[10] the form used by insurance company separate accounts organized as unit investment trusts and offering variable annuity contracts to register under the Investment Company Act and to offer securities under the Securities Act; and Form N–14,[11] the form used by registered management investment companies and business development companies to register under the Securities Act securities to be issued in business combinations.

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I. Background

Millions of individual Americans invest in shares of open-end management investment companies ("mutual funds"),[12] relying on mutual funds for their retirement, their children's education, and their other basic financial needs.[13] These investors face a difficult task in choosing among the more than 8,000 available mutual funds.[14] Fund prospectuses, which have been criticized by investor advocates, representatives of the fund industry, and others as long and complicated, often prove difficult for investors to use efficiently in comparing their many choices.[15] Current Commission rules

[1] 17 CFR 230.159A.
[2] 17 CFR 230.482.
[3] 17 CFR 230.485.
[4] 17 CFR 230.497.
[5] 17 CFR 230.498.
[6] 17 CFR 232.304.
[7] 17 CFR 232.401.
[8] 17 CFR 232.10 *et seq.*
[9] 17 CFR 239.15A and 274.11A.
[10] 17 CFR 239.17b and 274.11c.
[11] 17 CFR 239.23.

[12] An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)].

[13] Investment Company Institute, *2007 Investment Campany Fact Book*, at 57 (2007), available at: *http://www.icifactbook.org/pdf/2007_factbook.pdf* (96 million individuals own mutual funds).

[14] *Id.* at 10 (as of year-end 2006, there were 8,726 mutual funds).

[15] *See* William D. Lutz, Ph.D., Professor of English, Rutgers University, Transcript of U.S. Securities and Exchange Commission Interactive Data Roundtable, at 69 (June 12, 2006), available at: *http://www.sec.gov/spotlight/xbrl/xbrlafficialtranscript0606.pdf* ("June 12 Roundtable Transcript") (stating that current mutual fund prospectus is "unreadable"); Don Phillips, Managing Director, Morningstar, Inc., *id.* at 26 (stating that current prospectus is "bombarding investors with way more information than they can handle and that they can intelligently assimilate"). A Webcast archive of the June 12 Interactive Data Roundtable is available at: *http://www.connectlive.com/events/secxbrl/. See alsa*

require mutual fund prospectuses to contain key information about investment objectives, risks, and expenses that, while important to investors, can be difficult for investors to extract. Prospectuses are often long, both because they contain a wealth of detailed information, which our rules require, and because prospectuses for multiple funds are often combined in a single document. Too frequently, the language of prospectuses is complex and legalistic, and the presentation formats make little use of graphic design techniques that would contribute to readability.

Numerous commentators have suggested that investment information that is key to an investment decision should be provided in a streamlined document with other more detailed information provided elsewhere.[16] Furthermore, recent investor surveys indicate that investors prefer to receive information in concise, user-friendly formats.[17]

Similar opinions were voiced at a roundtable held by the Commission in June 2006, at which representatives from investor groups, the mutual fund industry, analysts, and others discussed how the Commission could change the mutual fund disclosure framework so that investors would be provided with better information. Significant discussion at the roundtable concerned the importance of providing mutual fund investors with access to key fund data in a shorter, more easily understandable format.[18] The participants focused on the importance of providing mutual fund investors with shorter disclosure documents, containing key information, with more detailed disclosure documents available to investors and others who choose to review additional information.[19] There was consensus among the roundtable participants that the key information that investors need to make an investment decision includes information about a mutual fund's investment objectives and strategies, risks, costs, and performance.[20]

The roundtable participants also discussed the potential benefits of increased Internet availability of fund disclosure documents, which include, among other things, facilitating comparisons among funds and replacing "one-size-fits-all" disclosure with disclosure that each investor can tailor to his or her own needs.[21] In recent years, access to the Internet has greatly expanded,[22] and significant strides

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Investment Company Institute, *Understanding Preferences for Mutual Fund Information*, at 8 (Aug. 2006), available at: *http://ici.org/pdf/rpt_06_inv_prefs_summary.pdf* ("*ICI Investor Preferences Study*") (noting that sixty percent of recent fund investors describe mutual fund prospectuses as very or somewhat difficult to understand, and two-thirds say prospectuses contain too much information); Associated Press Online, *Experts: Investors Face Excess Information* (May 25, 2005) ("There is broad agreement * * * that prospectuses have too much information * * * to be useful." (quoting Mercer Bullard, President, Fund Democracy, Inc.)); Thomas P. Lemke and Gerald T. Lins, *The "Gift" of Disclosure: A Suggested Approach for Managed Investments*, The Investment Lawyer, at 19 (Jan. 2001) (stating that the fund prospectus "typically contains more information than the average investor needs").

[16] *See* Charles A. Jaffe, *Improving Disclosure of Funds Can Be Done*, The Fort Worth Star-Telegram (May 7, 2006) ("Bring back the profile prospectus, and make its use mandatory. * * * A two page-summary of [the] key points [in the profile]—at the front of the prospectus—would give investors the bare minimum of what they should know out of the paperwork."); *Experts: Investors Face Excess Information*, *supra* note 15 (stating "a possible middle ground in the disclosure debate is to rely more heavily on so-called profile documents which provide a two-page synopsis of a fund" (attributing statement to Mercer Bullard, President, Fund Democracy, Inc.)); *Mutual Funds: A Review of the Regulatory Landscape*, Hearing Before the Subcomm. on Capital Markets, Insurance and Government Sponsored Enterprises of the Comm. on Financial Services, U.S. House of Representatives, 109th Cong. (May 10, 2005), at 24 ("To my mind, a new and enhanced mutual fund prospectus should have two core components. It should be short, addressing only the most important factors about which typical fund investors care in making investment decisions, and it should be supplemented by additional information available electronically, specifically through the Internet, unless an investor chooses to receive additional information through other means." (Testimony of Barry P. Barbash, then Partner, Shearman & Sterling LLP)); Thomas P. Lemke and Gerald T. Lins, *The "Gift" of Disclosure: A Suggested Approach for Managed Investments*, *supra* note 15, at 19 (information that is important to investors includes goals and investment policies, risks, costs, performance, and the identity and background of the manager).

In addition, a mutual fund task force organized by the National Association of Securities Dealers, Inc. ("NASD") supported the use of a "profile plus" document, on the Internet, that would include, among other things, basic information about a fund's investment strategies, risks, and total costs, with hyperlinks to additional information in the prospectus. *See* NASD Mutual Fund Task Force, *Report of the Mutual Fund Task Force: Mutual Fund Distribution* (Mar. 2005), available at: *http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p013690.pdf*.

[17] *See ICI Investor Preferences Study*, *supra* note 15, at 29 ("Nearly nine in 10 recent fund investors say they prefer a summary of the information they want to know before buying fund shares, either alone or along with a detailed document. * * * Just 13 percent prefer to receive only a detailed document."); Barbara Roper and Stephen Brobeck, Consumer Federation of America, *Mutual Fund Purchase Practices*, at 13–14 (June 2006), available at: *http://www.consumerfed.org/pdfs/mutual_fund_survey_report.pdf* (survey respondents more likely to consult a fund summary document rather than a prospectus or other written materials).

[18] *See, e.g.*, Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc., June 12 Roundtable Transcript, *supra* note 15, at 31 ("[S]hareholders prefer receiving a concise summary of fund information before buying."); William D. Lutz, Ph.D., Professor of English, Rutgers University, *id.* at 88 (stating that "investors [should] be able to find quickly and easily the information they want").

[19] *See* Don Phillips, Managing Director, Morningstar, Inc., *id.* at 27 (stating that mutual fund investors need two different documents, including a simplified print document and a tagged electronic document); Paul Schott Stevens, President and Chief Executive Officer, Investment Company Institute, *id.* at 72–73 (urging the Commission to consider permitting mutual funds to "deliver a clear concise disclosure document * * * much like the profile prospectus" with a statement that additional disclosure is available on the funds' website or upon request in paper); Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 41 (noting that the industry-recommended disclosure document, the "profile plus," would include hyperlinks to the statutory prospectus, which would enable investors to "choose for themselves the level of detail they want").

[20] *See* Barbara Roper, Director of Investor Protection, Consumer Federation of America, June 12 Roundtable Transcript, *supra* note 15, at 20 (noting that there is "agreement to the point of near unanimity about the basic factors that investors should consider when selecting a mutual fund. These closely track the content of the original fund profile with highest priority given to investment objectives and strategies, risks, costs, and past performance particularly as it relates to the volatility of past returns."). *See also* Paul G. Haaga, Jr., Executive Vice President, Capital Research and Management Company, *id.* at 90 (stating that the Commission should "specify some minimum amounts of information" to provide investors with "something along the lines of the [fund] profile"); Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc., *id.* at 31 ("The profile is an excellent well organized disclosure document whose content requirements were substantiated by SEC-sponsored focus groups and an industry pilot program."); William D. Lutz, Ph.D., Professor of English, Rutgers University, *id.* at 88 (noting that the information that mutual fund investors want has not changed substantially since the adoption of the profile); Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 40–41 (noting that NASD's "profile plus" builds on the profile and includes key information about a fund's objectives, risks, fees, and performance, as well as information about dealer fees and conflicts of interest).

[21] *See* Paul Schott Stevens, President and Chief Executive Officer, Investment Company Institute, *id.* at 70–71 (stating that the Internet can serve as "far more than a stand-in for paper documents * * * It can * * *put investors in control when it comes to information about their investments."); Don Phillips, Managing Director, Morningstar, Inc., *id.* at 49 (discussing "the ability to use the Internet as a tool for comparative shopping"); Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 41 (noting that the Internet "doesn't force disclosure into one size fits all").

[22] Recent surveys show that Internet use among adults is at an all time high with approximately three quarters of Americans having access to the Internet. *See A Typology of Information and Technology Users*, Pew Internet & American Life Project, at 2 (May 2007), available at: *http://www.pewinternet.org/pdfs/PIP_ICT_Typology.pdf*; *Internet Penetration and Impact*, Pew Internet & American Life Project, at 3 (Apr. 2006), available at: *http://www.pewinternet.org/pdfs/PIP_Internet_Impact.pdf*. Further, while some have noted a "digital divide" for certain groups, *see, e.g.*, Susannah Fox, *Digital Divisions*, Pew Internet & American Life Project, at 1 (Oct. 5, 2005) (noting that certain groups lag behind in Internet usage, including Americans age 65 and older, African-Americans, and those with less education), others have noted that this divide may be diminishing for

Continued

have been made in the speed and quality of Internet connections.[23] The Commission has already harnessed the power of these technological advances to provide better access to information in a number of areas. Recently, for example, we created a program that permits issuers, on a voluntary basis, to submit to the Commission financial information and, in the case of mutual funds, key prospectus information, in an interactive data format that facilitates automated retrieval, analysis, and comparison of the information.[24] Earlier this year, we adopted rules that provide all shareholders with the ability to choose whether to receive proxy materials in paper or via the Internet.[25] As suggested by the participants at the roundtable, advances in technology also offer a promising means to address the length and complexity of mutual fund prospectuses by streamlining the key information that is provided to investors, ensuring that access to the full wealth of information about a fund is immediately and easily accessible, and providing the means to present all information about a fund online in an interactive format that facilitates comparisons of key information, such as expenses, across different funds and different share classes of the same fund.[26] Technology has the potential to replace the current one-size-fits-all mutual fund prospectus with an approach that allows investors, their financial intermediaries, third party analysts, and others to tailor the wealth of available information to their particular needs and circumstances.

We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

To implement this improved disclosure framework, we are proposing amendments to Form N–1A that would require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. This key information has been identified by the participants in the roundtable, by investor research, and by a variety of commentators as information that is important to most investors in selecting mutual funds.[27] The key information would be required to be presented in plain English in a standardized order. Our intent is that this information would be presented succinctly, in three or four pages at the front of the prospectus.

We are also proposing a new option for satisfying prospectus delivery obligations with respect to mutual fund securities under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a summary prospectus ("Summary Prospectus"), and the statutory prospectus would be provided on an Internet Web site.[28] Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. Our intent in proposing this option is that funds take full advantage of the Internet's search and retrieval capabilities in order to enhance the provision of information to mutual fund investors.

Today's proposals have the potential to revolutionize the provision of information to the millions of mutual fund investors who rely on mutual funds for their most basic financial needs. The proposals are intended to help investors who are overwhelmed by the choices among thousands of available funds described in lengthy and legalistic documents to readily access key information that is important to an informed investment decision. At the same time, by harnessing the power of technology to deliver information in better, more usable formats, the proposals can help those investors, their intermediaries, third party analysts, the financial press, and others to locate and compare facts and data from the wealth of more detailed disclosures that are available.

II. Discussion

A. Proposed Amendments to Form N–1A

We are proposing amendments to Form N–1A that would require the statutory prospectus of every mutual fund to include a summary section at the front of the prospectus consisting of key information presented in plain English in a standardized order. This presentation is intended to address investors' preferences for concise, user-friendly information. The proposed summary section in a fund's prospectus would provide investors with key information about the fund that investors could use to evaluate and compare the fund. This summary would be located in a standardized, easily accessible place and would be available to all investors, regardless of whether the fund uses a Summary Prospectus and regardless of whether the investor is reviewing the prospectus in a paper or electronic format.

Our proposal builds upon the risk/return summary that is currently required at the front of every mutual fund prospectus.[29] The risk/return summary presents a mutual fund's investment objectives and strategies, risks, and costs, in a standardized order at the front of the prospectus. The risk/return summary has, to a significant extent, functioned effectively to convey this information to investors. As a result, the current risk/return summary serves as the centerpiece of the proposed prospectus summary section.

We are, however, proposing to modify the front portion of the prospectus in two significant ways in order to make it more useful to investors. First, we are proposing to require that brief additional information be included in

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those groups. *See, e.g., Mutual Fund Shareholders' Use of the Internet, 2006*, Investment Company Institute, Research Fundamentals, at 7 (Oct. 2006), available at: *http://www.ici.org/stats/res/1fm-v15n6.pdf* ("Recent increases in Internet access among older shareholders * * * have narrowed the generational gap considerably. Today, shareholders age 65 or older are more than twice as likely to have Internet access than in 2000."); Michel Marriott, *Blacks Turn to Internet Highway, And Digital Divide Starts to Close*, The New York Times (Mar. 31, 2006), available at: *http://www.nytimes.com/2006/03/31/us/31divide.html?ex=1301461200&en=6fd4e942aaaa04ad&ei=5088* ("African-Americans are steadily gaining access to and ease with the Internet, signaling a remarkable closing of the 'digital divide' that many experts had worried would be a crippling disadvantage in achieving success.").

[23] *See* John B. Horrigan, *Home Broadband Adoption 2007*, Pew Internet & American Life Project, at 1 (June 2007), available at: *http://www.pewinternet.org/pdfs/PIP_Broadband%202007.pdf* (47% of all adult Americans had a broadband connection at home as of early 2007).

[24] *See* Securities Act Release No. 8823 (July 11, 2007) [72 FR 39290 (July 17, 2007)] (adopting rule amendments to enable mutual funds voluntarily to submit supplemental tagged information contained in the risk/return summary section of their prospectuses); Securities Act Release No. 8529 (Feb. 3, 2005) [70 FR 6556 (Feb. 8, 2005)] (adopting rule amendments to enable registrants voluntarily to submit supplemental tagged financial information).

[25] Exchange Act Release No. 56135 (July 26, 2007) [72 FR 42222 (Aug. 1, 2007)].

[26] A mutual fund may issue more than one class of shares that represent interests in the same portfolio of securities with each class, among other things, having a different arrangement for shareholder services or the distribution of securities, or both. *See* rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3].

[27] *See supra* notes 16 and 20.

[28] A "statutory prospectus" is a prospectus that meets the requirements of Section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

[29] Items 2 and 3 of Form N–1A. *See* Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13919–25 (Mar. 23, 1998)] (adopting risk/return summary requirement).

the summary section of the prospectus so that this section will function as a more comprehensive presentation. The information required in the summary section of the prospectus would be the same as that required in the new Summary Prospectus, and it is key information that is important to an investment decision. This approach differs from that used in the current risk/return summary. When the Commission adopted the risk/return summary, it simultaneously permitted funds to offer their shares pursuant to a "profile" that summarizes key information about the fund.[30] While the risk/return summary items were included in the profile, the profile also included additional information. We believe that the key information that is important to an investment decision is the same, whether an investor is reviewing the summary section of a statutory prospectus or a short-form disclosure document; and, for that reason, we are proposing to require the same information in the summary section of the statutory prospectus and in the Summary Prospectus. In each case, our intent is for funds to prepare a concise summary (on the order of three or four pages) that will provide comprehensive key information.

Second, we are proposing to require that the summary information be presented separately for each fund covered by a multiple fund prospectus and that the information for multiple funds not be integrated.[31] This requirement is intended to assist investors in finding important information regarding the particular fund in which they are interested. Currently, in presenting the risk/return summary information, multiple fund prospectuses may present all of the investment objectives, investment strategies, and risks for multiple funds, followed by the performance information for those funds, and, finally, the fee tables for those funds.[32] Unfortunately, in practice, this flexibility has too frequently resulted in lengthy presentations that are not summary in nature and from which an investor would have considerable difficulty extracting the information about the particular fund in which he or she is interested. In practice, multiple fund prospectuses have integrated information for as many as 40 funds, and we are concerned that it would be extremely difficult, if not impossible, to achieve our goal of short summaries on the order of three or four pages if those summaries were permitted to contain information about multiple funds.

The proposed requirement that summary information be separately presented for each fund in a multiple fund prospectus is intended to address the problem of lengthy, complex multiple fund prospectuses in the least intrusive manner possible. Multiple fund prospectuses contribute substantially to prospectus length and complexity, which act as barriers to investor understanding. Rather than eliminate altogether the ability to use multiple fund prospectuses, which could have more significant cost and other implications than our proposal, we concluded that it was preferable to propose to require a self-contained summary section for each fund.

The Commission is committed to encouraging statutory prospectuses that are simpler, clearer, and more useful to investors. The proposed prospectus summary section is intended to provide investors with streamlined disclosure of key mutual fund information at the front of the statutory prospectus, in a standardized order that facilitates comparisons across funds. We are proposing the following amendments to Form N–1A in order to implement the summary section.

1. General Instructions to Form N–1A

We are proposing amendments to the General Instructions to Form N–1A to address the proposed new summary section of the statutory prospectus. These proposed amendments address plain English and organizational requirements.

We propose to amend the General Instructions to state that the summary section of the prospectus must be provided in plain English under rule 421(d) under the Securities Act.[33] Rule 421(d) requires an issuer to use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors sections of its prospectus.[34] The amended instruction would serve as a reminder that the new prospectus summary section is subject to rule 421(d). The use of plain English principles in the new summary section will further our goal of encouraging funds to create usable summaries at the front of their prospectuses. The prospectus, in its entirety, also would remain subject to the requirement that the information be presented in a clear, concise, and understandable manner.[35]

We are also proposing amendments to the organizational requirements of the General Instructions. The proposals would require mutual funds to disclose the summary information in numerical order at the front of the prospectus and not to precede this information with any information other than the cover page or table of contents.[36] Information included in the summary section need not be repeated elsewhere in the prospectus. While a fund may continue to include information in the prospectus that is not required, a fund may not include any such additional information in the summary section of the prospectus.[37]

As noted above, we are also proposing that a multiple fund prospectus be required to present all of the summary information for each fund sequentially and not integrate the information for more than one fund.[38] That is, a multiple fund prospectus would be required to present all of the summary information for a particular fund together, followed by all of the summary information for each additional fund. For example, a multiple fund prospectus would not be permitted to present the investment objectives for several funds followed by the fee tables for several funds. A multiple fund prospectus would be required to clearly identify the name of the particular fund at the beginning of the summary information for the fund.

As is the case with the current risk/return summary, the proposed instructions would permit a fund with multiple share classes, each with its own cost structure, to present the summary information separately for each class, to integrate the information for multiple classes, or to use another presentation that is consistent with disclosing the summary information in a standard order at the beginning of the

[30] Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998)]. Our proposed amendments would eliminate the profile.

[31] Proposed General Instruction C.3.(c)(ii) of Form N–1A.

[32] General Instruction C.3.(c) of Form N–1A.

[33] Proposed General Instruction B.4.(c) of Form N–1A; 17 CFR 230.421(d).

[34] Rule 421(d) requires the use of the following plain English principles: (1) Short sentences; (2) definite, concrete, everyday words; (3) active voice; (4) tabular presentation or bullet lists for complex material, wherever possible; (5) no legal jargon or highly technical business terms; and (6) no multiple negatives.

[35] Pursuant to rule 421(b), the following standards must be used when preparing prospectuses: (1) Present information in clear, concise sections, paragraphs, and sentences; (2) use descriptive headings and subheadings; (3) avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus; and (4) avoid legal and highly technical business terminology. 17 CFR 230.421(b).

[36] Proposed General Instruction C.3.(a) to Form N–1A.

[37] Proposed General Instruction C.3.(b) of Form N–1A.

[38] Proposed General Instruction C.3.(c)(ii) of Form N–1A; *see supra* note and accompanying text.

prospectus.[39] Generally, this flexibility has resulted in effective presentations of class-specific cost and performance information that facilitate comparisons among classes.

Finally, we are proposing to eliminate the provisions of Form N–1A that permit a fund to omit detailed information about purchase and redemption procedures from the prospectus and to provide this information in a separate document that is incorporated into and delivered with the prospectus.[40] This option appears to be unnecessary in light of the proposed new Summary Prospectus which could be used, at a fund's option, along with any additional sales materials, including a document describing purchase and redemption procedures.[41] In addition, the option to provide a separate purchase and redemption document has been used infrequently since its adoption. We are also proposing to eliminate a similar provision in the requirements for the statement of additional information ("SAI").[42] The proposed elimination of these provisions does not otherwise alter the information about purchase and redemption procedures that must appear in the fund's prospectus and SAI, and this information would continue to be required in those documents.

We request comment on the proposed amendments to the General Instructions, and in particular on the following issues:

- Are the proposed revisions to the General Instructions appropriate? Will they be helpful in encouraging prospectus summary sections that address investors' preferences for concise, user-friendly information?
- Should we amend the General Instructions to Form N–1A in other respects? For example, should we impose any formatting requirements on the summary section of the prospectus, such as limitations on page length (*e.g.*, three or four pages) or required font sizes or layouts? Would any such formatting requirements further the goal of making the summary section a user-friendly presentation of information?
- Is it appropriate to prohibit a fund from including information in the summary section that is not required?
- Are the proposed requirements for the order of information appropriate? Will they contribute to more readable prospectuses and summary information that is easy to evaluate and compare?
- Is it helpful for the prospectus to have a separate summary section?
- Are the requirements with respect to multiple fund and multiple class prospectuses appropriate? Should we prohibit multiple fund or multiple class prospectuses altogether? Should we provide greater or lesser flexibility in the presentation of multiple fund or multiple class prospectuses? If we permit greater flexibility, how can we do so consistent with the goal of achieving concise, readable summaries? For example, if we permit integrated multiple fund summary presentations for some or all funds, should we also impose a maximum page limit on a summary section that integrates the information for multiple funds?
- Should we eliminate or otherwise modify the optional separate purchase and redemption document? What, if any, purpose will this option serve if we adopt the new Summary Prospectus?
- Are there alternatives we should consider that would achieve our goal of providing enhanced disclosures to investors in a more cost effective manner?

2. Information Required in Summary Section

The summary section of a mutual fund statutory prospectus would consist of the following information: (1) Investment objectives; (2) costs; (3) principal investment strategies, risks, and performance; (4) top ten portfolio holdings; (5) investment advisers and portfolio managers; (6) brief purchase and sale and tax information; and (7) financial intermediary compensation. This information is largely drawn from the current risk/return summary and fund profile.

Investment Objectives and Goals

Like the current risk/return summary, the proposed summary section would begin with disclosure of a fund's investment objectives or goals. A fund also would be permitted to identify its type or category (*e.g.*, that it is a money market fund or balanced fund).[43]

Fee Table

The fee table and example, which are drawn from the current risk/return summary and which disclose the costs of investing, would immediately follow the fund's investment objectives.[44] In order to address continuing concerns about investor understanding of mutual fund costs,[45] we are proposing several modifications to the current fee table that are intended to provide greater prominence to the cost disclosures and make the table more understandable.

We are proposing to move the fee table forward from its current location, which follows information about investment strategies, risks, and past performance. Contrary to our intent in including the fee table in the risk/return summary, this information has sometimes appeared fairly deep within the prospectus, particularly in multiple fund prospectuses covering a large number of funds. The proposed change to the location of the fee table, together with the proposed requirement that the summary section for each fund be provided separately, should serve to enhance the prominence of the cost information. The fee table and example are designed to help investors understand the costs of investing in a fund and to compare those costs with the costs of other funds. Placing the fee table and example at the front of the summary information reflects the importance of costs to an investment decision.[46]

We are proposing several additional amendments to the fee table that are intended to improve the disclosure that investors receive regarding fees and expenses of the fund. First, we are proposing that mutual funds that offer discounts on front-end sales charges for volume purchases (so-called "breakpoint discounts") include brief narrative disclosure alerting investors to the availability of those discounts.[47] Several years ago, the Commission and NASD staffs identified concerns regarding the extent to which mutual fund investors were receiving breakpoint discounts to which they were entitled. The Commission adopted enhanced prospectus disclosure requirements regarding breakpoint

[39] Proposed General Instruction C.3.(c)(ii) of Form N–1A.

[40] Instruction 6 to Item 1(b) of Form N–1A; Item 6(g) of Form N–1A; Investment Company Act Release No. 23064, *supra* note , 63 FR at 13932–33.

[41] *See infra* notes 87 through 90 and accompanying text.

[42] Instruction to Item 18(a) of Form N–1A; proposed Item 24(a) of Form N–1A (redesignating current Item 18(a) and eliminating Instruction).

[43] Proposed Item 2 of Form N–1A; Item 2(a) of Form N–1A; rule 498(c)(2)(i). *See* Investment Company Act Release No. 23064, *supra* note 29, 63 FR 13919–20 (adopting investment objectives or goals disclosure requirement in Item 2(a) of Form N–1A).

[44] Proposed Item 3 of Form N–1A; Item 3 of Form N–1A; rule 498(c)(2)(iv).

[45] *See* Barbara Roper, Director of Investor Protection, Consumer Federation of America, June 12 Roundtable Transcript, *supra* note 15, at 21; James J. Choi, David Laibson, & Brigitte C. Madrian, National Bureau of Economic Research, *Why Does the Law of One Price Fail? An Experiment on Index Mutual Funds*, at 6 (May 2006), available at: *http://www.nber.org/papers/w12261.pdf*.

[46] For example, a 1% increase in annual fees reduces an investor's return by approximately 18% over 20 years.

[47] Proposed Item 3 of Form N–1A; proposed Instruction 1(b) to proposed Item 3 of Form N–1A.

discounts at that time.[48] We believe that investor awareness of the availability of these discounts may be heightened further by requiring brief narrative disclosure about the availability of these discounts at the beginning of the fee table.

Second, we are proposing to revise the heading "Annual Fund Operating Expenses" in the fee table. Specifically, we propose to revise the parenthetical following the heading to read "ongoing expenses that you pay each year as a percentage of the value of your investment" in place of "expenses that are deducted from Fund assets." In recent years, we have taken significant steps to address concerns that investors do not understand that they pay ongoing costs every year when they invest in mutual funds, including requiring disclosure of ongoing costs in shareholder reports [49] Our proposed revision further addresses those concerns by making clear that the expenses in question are paid by investors as a percentage of the value of their investments in the fund.

Third, for funds other than money market funds, the proposal would require the addition of brief disclosure regarding portfolio turnover immediately following the fee table example.[50] A fund would be required to disclose its portfolio turnover rate for the most recent fiscal year, as a percentage of the average value of its portfolio. This numerical disclosure would be accompanied by a brief explanation of the effect of portfolio turnover on transaction costs and fund performance. The prospectus currently is required to include the portfolio turnover rate in the financial highlights table as well as narrative information about portfolio turnover,[51] and the effect of transaction costs is reflected in fund performance. Nonetheless, some concerns have been expressed in recent years regarding the degree to which investors understand the effect of portfolio turnover, and the resulting transaction costs, on fund expenses and performance.[52] Our proposal to require brief portfolio turnover disclosure in the summary section of the prospectus is intended to address these concerns.

Finally, we are proposing to amend the requirement that a fund disclose in its fee table gross operating expenses that do not reflect the effect of expense reimbursement or fee waiver arrangements, which result in reduced expenses being paid by the fund.[53] While gross operating expenses may provide investors with a more accurate understanding of the potential long-term costs of an investment in the fund, they may also overstate the actual, current expenses. In addition, gross operating expenses may overstate long-term expenses because any expense increase due to the termination of an expense reimbursement or fee waiver arrangement may be offset by reduced expenses that accompany economies of scale resulting from asset growth.

To address these issues, we are proposing to permit a fund to place two additional captions directly below the "Total Annual Fund Operating Expenses" caption in cases where there were expense reimbursement or fee waiver arrangements that reduced fund operating expenses and that will continue to reduce them for no less than one year from the effective date of the fund's registration statement.[54] One caption would show the amount of the expense reimbursement or fee waiver, and a second caption would show the fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. Funds that disclose these arrangements would also be required to disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, and briefly describe who can terminate the arrangement and under what circumstances. Further, in computing the fee table example, a fund would be permitted to reflect any expense reimbursement or fee waiver arrangements that reduced any fund operating expenses during the most recently completed calendar year and that will continue to reduce them for no less than one year from the effective date of the fund's registration statement.[55] This adjustment could be reflected only in the periods for which the expense reimbursement or fee waiver arrangement is expected to continue. For example, if such an arrangement were expected to continue for one year, then, in the computation of 10-year expenses in the fee table example, the arrangement could only be reflected in the first of the 10 years.

Investments, Risks, and Performance

Following the fee table and example, we are proposing that a fund disclose its principal investment strategies and risks,[56] in the same manner required in the current risk/return summary.[57] This would include the current risk/return bar chart and table illustrating the variability of returns and showing the fund's past performance.

Portfolio Holdings

The proposed summary section would next need to include a list of the 10 largest issues contained in the fund's portfolio, in descending order, together with the percentage of net assets represented by each.[58] Information concerning portfolio holdings may provide investors with a greater understanding of a fund's stated investment objectives and strategies and may assist investors in making more informed asset allocation decisions. It was suggested at our roundtable that it may be appropriate to include this information, which currently is not contained in the prospectus, in a short summary of key fund information.[59] In

[48] *See* Investment Company Act Release No. 26464 (June 7, 2004) [69 FR 33262 (June 14, 2004)].

[49] Item 22(d)(1) of Form N–1A; Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (adopting disclosure of ongoing costs in shareholder reports). *See also General Accounting Office report on Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition*, at 66–81 (June 2000), available at: *http://www.gao.gov/archive/2000/gg00126.pdf* (discussing lack of investor awareness of the fees they pay and investor focus on mutual fund sales charges rather than ongoing fees).

[50] Proposed Instruction 5 to proposed Item 3 of Form N–1A.

[51] Instruction 7 to Item 4(b)(1) of Form N–1A; Item 8(a) of Form N–1A; Item 11(e) of Form N–1A. The portfolio turnover rate that would be required to be disclosed in the summary section would be calculated in the same manner that is currently required in Form N–1A.

[52] *See* Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)] (request for comment regarding ways to improve disclosure of transaction costs); Report of the Mutual Fund Task Force on Soft Dollars and Portfolio Transaction Costs (Nov. 11, 2004), available at: *http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p012356.pdf*.

[53] Instructions 3(d)(i) and 5(a) to Item 3 of Form N–1A. In an expense reimbursement arrangement, the adviser reimburses the fund for expenses incurred. Under a fee waiver arrangement, the adviser agrees to waive a portion of its fees in order to limit fund expenses.

[54] Proposed Instructions 3(e) and 6(b) to proposed Item 3 of Form N–1A.

[55] Proposed Instruction 4(a) to proposed Item 3 of Form N–1A. We also propose a technical amendment to the instructions to the expense example to eliminate language permitting funds to reflect the impact of the amortization of initial organization expenses in the expense example numbers. *Id.* This language is unnecessary because initial organization expenses must be expensed as incurred and may no longer be capitalized. *See* American Institute of Certified Public Accountants, Statement of Position 98–5, *Reporting on the Costs of Start-Up Activities* (Apr. 3, 1998).

[56] Proposed Item 4 of Form N–1A. To conform to other changes we are proposing to Form N–1A, the Instructions to proposed Item 4 contain technical revisions that (1) amend cross-references to other Items in Form N–1A; and (2) eliminate language related to the presentation of performance information for more than one fund, given the proposed requirement that information for each fund be presented separately. Proposed Instructions 2(e) and 3 to proposed Item 4(b)(2) of Form N–1A.

[57] Items 2(b) and (c) of Form N–1A.

[58] Proposed Item 5 of Form N–1A.

[59] *See* Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc., Continued

addition, many funds and third party analysts include top 10 portfolio holdings in fund summaries distributed to investors and prominently on their Web sites, suggesting significant investor interest in this information. While complete portfolio holdings information currently is available in Commission filings on Form N–CSR and Form N–Q on a quarterly basis,[60] we believe that the top 10 holdings may be important information in the summary section of the prospectus, which is intended to bring together, in a single, readily accessible place, key information that is important to an investment decision.

Mutual funds would be required to provide their top 10 portfolio holdings as of the end of the most recent calendar quarter.[61] In determining their top 10 holdings, funds would be required to aggregate and treat as a single issue (1) all fully collateralized repurchase agreements; and (2) all securities of any one issuer (other than fully collateralized repurchase agreements).[62] The U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities would be treated as a separate issuer.[63]

We are proposing an exclusion to the requirement to list the top 10 holdings that is similar to an exclusion in the current requirements for quarterly disclosure of a fund's complete portfolio holdings.[64] Funds rely on this exclusion to guard against the premature release of certain positions that could lead to front-running and other predatory trading practices.[65] Currently, a fund's complete portfolio schedule filed with the Commission on Form N–CSR or Form N–Q may list an amount not exceeding five percent of the total value of the portfolio holdings in one amount as "Miscellaneous securities," provided that securities so listed are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously been reported by name to the shareholders, or set forth in any registration statement, application, or annual report or otherwise made available to the public.

Under the proposal, in listing the top 10 holdings, any securities that would be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue could be listed in one amount as "Miscellaneous securities," provided that the securities so listed are eligible to be categorized by the fund as "Miscellaneous securities" in a complete portfolio schedule dated as of the end of the most recent calendar quarter. However, if any security that is included in "Miscellaneous securities" would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue in the top 10 portfolio holdings, the remaining securities of that group must nonetheless be listed in the top 10 portfolio holdings, even if the remaining securities alone would not otherwise be required to be listed in this manner (*e.g.*, because the combined value of the security listed in "Miscellaneous securities" and the remaining securities of the same issuer is sufficient to cause them to be among the 10 largest issues, but the value of the remaining securities alone is not sufficient to cause the remaining securities to be among the 10 largest issues). A brief footnote explaining the term "Miscellaneous securities" would be required.[66]

Management

The next item in the proposed prospectus summary section would be the name of each investment adviser and sub-adviser of the fund, followed by the name, title, and length of service of the fund's portfolio managers.[67] These items are similar to disclosures currently required in a fund profile, as well as in the fund's prospectus.[68]

As in the current profile, a fund would not be required to identify a sub-adviser whose sole responsibility is limited to day-to-day management of the fund's cash instruments unless the fund is a money market fund or other fund with a principal investment strategy of regularly holding cash instruments.[69] Also as in the current profile, a fund having three or more sub-advisers, each of which manages a portion of the fund's portfolio, would not be required to identify each sub-adviser, except that the fund would be required to identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the fund's net assets.[70] We believe that, as in the current profile, a significant portion of the fund's net assets for this purpose generally should be deemed to be 30% or more of the fund's net assets.[71] The portfolio managers required to be listed would be the same ones with respect to which information is currently required in the prospectus.[72]

Purchase and Sale of Fund Shares

The proposed summary section would next disclose the fund's minimum initial or subsequent investment requirements and the fact that the fund's shares are redeemable, and would identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer).[73] This disclosure would be the same as that required in the current rule 498 profile except that we are not proposing to include certain fee disclosures that are also covered by the fee table, including a fund's sales loads, breakpoints, and charges upon redemption.[74]

Tax Information

Our proposals would require a mutual fund to state, as applicable, that it intends to make distributions that may be taxed as ordinary income or capital gains or that the fund intends to distribute tax-exempt income. A fund that holds itself out as investing in securities generating tax-exempt income would be required to provide, as applicable, a general statement to the effect that a portion of the fund's

June 12 Roundtable Transcript, *supra* note 15, at 32 (suggesting that the current profile be amended to include the top 10 portfolio holdings).

[60] Form N–CSR [17 CFR 249.331; 17 CFR 274.128]; Form N–Q [17 CFR 249.332; 17 CFR 274.130].

[61] Proposed Instruction 1 to proposed Item 5 of Form N–1A.

[62] This proposed aggregation provision is the same as that currently applicable for purposes of determining whether the value of an issue exceeds one percent of net asset value in the summary portfolio schedule that may be included in a fund's report to shareholders. Schedule VI of Regulation S–X [17 CFR 210.12–12C] (Summary of Schedule of Investments in Securities of Unaffiliated Issuers).

[63] Proposed Instruction 2 to proposed Item 5 of Form N–1A.

[64] Note 1 to Schedule I of Regulation S–X [17 CFR 210.12–12] (Schedule of Investments in Securities of Unaffiliated Issuers); Note 5 to Schedule VI of Regulation S–X [17 CFR 210.12–12C] (Summary of Schedule of Investments in Securities of Unaffiliated Issuers).

[65] Investment Company Act Release No. 26372, *supra* note 49, 69 FR at 11250.

[66] Proposed Instruction 3 to proposed Item 5 of Form N–1A.

[67] Proposed Item 6 of Form N–1A.

[68] Item 5 of Form N–1A; rule 498(c)(2)(v). Additional disclosures regarding investment advisers and portfolio managers that are currently required in the prospectus would continue to be required, but not in the summary section. Proposed Item 11(a) of Form N–1A.

[69] Proposed Instruction 1 to proposed Item 6(a) of Form N–1A; rule 498(c)(2)(v)(B)(1). A fund would continue to be required to provide the name, address, and experience of all sub-advisers elsewhere in the prospectus. Proposed Item 11(a)(1)(i) of Form N–1A.

[70] Proposed Instruction 2 to proposed Item 6(a) of Form N–1A; rule 498(c)(2)(v)(B)(2).

[71] This proposed exception would be consistent with the requirements of the current profile. Rule 498(c)(2)(v)(B)(2).

[72] Item 5(a)(2) of Form N–1A.

[73] Proposed Item 7 of Form N–1A.

[74] *See* rules 498(c)(2)(vi) and (vii) (profile purchase and sale disclosures).

distributions may be subject to federal income tax.[75] This proposed disclosure is a streamlined version of the tax disclosure required in the current rule 498 profile.[76]

Financial Intermediary Compensation

The proposed summary section of the prospectus would conclude with the following statement, which could be modified provided that the modified statement contains comparable information.[77]

"*Payments to Broker-Dealers and Other Financial Intermediaries*

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may influence the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information."

This disclosure would be new to fund prospectuses and would identify the existence of compensation arrangements with selling broker-dealers or other financial intermediaries, alert investors to the potential conflicts of interest arising from these arrangements, and direct investors to their salesperson or the financial intermediary's Web site for further information. It is intended to address, in part, concerns that mutual fund investors lack adequate information about certain distribution-related costs that create conflicts for broker-dealers and their associated persons.[78]

We request comment generally on the information proposed to be included in the summary section of the statutory prospectus, and in particular on the following issues:

- Does the proposed summary section encourage prospectuses that are simpler, clearer, and more useful to investors? Would the proposed summary section help investors to better compare funds?
- Should each of the proposed items be included in the summary section? Should any additional disclosure items currently required in Form N–1A be included in the summary section? Should we consider disclosure items that are not currently in Form N–1A? If so, what types of additional disclosures should we consider including in the summary section?
- How would the required narrative explanations of various items contribute to readability and length of the summary section? Should each of these explanations be required, permitted, or prohibited in the summary section? Should any of these explanations be required to appear in the prospectus, but outside the summary section?
- Is the proposed order of the information appropriate, or should it be modified? If so, how should it be modified?
- Should we also require a fund to disclose whether its objective may be changed without shareholder approval in the summary section?
- Are our proposed revisions to the fee table and example appropriate? Are there any other revisions to the fee table or example that we should consider?
- Is the proposed disclosure at the beginning of the fee table regarding discounts on front-end sales charges for volume purchases (*i.e.*, breakpoint discounts) appropriate?
- Should we consider any other revisions to headings in the fee table to make them more understandable to investors? For example, should the terms "load" or "12b–1" be eliminated? Do investors generally understand these terms, or are there clearer terms that we should require?
- How, if at all, should expense reimbursement and fee waiver arrangements be reflected in the fee table and expense example and accompanying disclosures?
- Should funds be required to disclose the detailed fee table information in the summary section or would it be more useful to investors to require disclosure of total shareholder fees and total annual fund operating expenses in the summary section and require disclosure of the detailed fee table outside the summary section? Are there any details regarding fund fees or expenses that should be included only outside the summary section? For example, the fee table currently permits "Other Expenses" to be subdivided into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses."[79] Should we permit this detail in the summary section of the prospectus, or should we require that funds providing this level of detail include it outside the summary section?
- Are there any revisions to the fee table example that would make it more useful for investors? For example, should the fee table example separately break out one-time charges, such as sales loads, and recurring expenses, such as management and 12b–1 fees? Should the required narrative explanation of the purpose of the fee table example be modified or eliminated?
- Should the proposed disclosure regarding a fund's portfolio turnover rate be included in the summary section? Should the proposed portfolio turnover narrative disclosure be modified or should funds be required to disclose their portfolio turnover in the summary section without any narrative explanation? Should any additional information regarding a fund's portfolio turnover rate be required to be disclosed as part of the summary section, for example. information about a fund that engages in active and frequent trading of portfolio securities and the tax consequences to shareholders and effects on fund performance of increased portfolio turnover?[80] Should funds be required to provide an explanation of the effect of portfolio turnover on transaction costs and fund performance? Should new funds (*e.g.*, funds with less than six months or one year of operations) be required to include information about portfolio turnover in the summary section given their limited period of operations? Is the portfolio turnover rate meaningful enough for a new fund that it should be required in the summary section?
- Should we consider any revisions to the bar chart or table disclosing a fund's returns? For example, should we modify or eliminate the required explanation that this information illustrates the variability of a fund's returns?
- Are there additional performance measures, such as past performance adjusted for the impact of inflation, that

[75] Proposed Item 8 of Form N–1A.

[76] See rule 498(c)(2)(viii). The current rule 498 profile also requires (1) a description of how frequently the fund intends to make distributions and what options for reinvestment of distributions are available to investors; (2) a statement that distributions may be taxable at different rates depending on the length of time that the fund holds its assets; and (3) that if a fund expects that its distributions primarily will consist of ordinary income or capital gains, disclosure to that effect be provided. This disclosure would continue to be required in the statutory prospectus. Proposed Items 12(d) and (f)(1)(i) (redesignating current Items 6(d) and (f)(1)(i)).

[77] Proposed Item 9 of Form N–1A.

[78] The Commission has recognized these concerns in a separate initiative in which the Commission proposed to require, among other things, disclosure of mutual fund distribution-related costs and conflicts of interest by selling broker-dealers and other financial intermediaries at the point of sale. Securities Act Release No. 8544 (Feb. 28, 2005) [70 FR 10521 (Mar. 4, 2005)]; Securities Act Release No. 8358 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)]. One commenter to that proposal recommended use of a short-form disclosure document that would include, among other things, basic information about such potential conflicts of interest. Comment Letter of NASD, dated March 31, 2005, available at: *http://www.sec.gov/rules/proposed/s70604/nasd033005.pdf* (supporting the use of a "profile plus" document on the Internet). *See also supra* note 16.

[79] Instruction 3(c)(iii) to Item 3 of Form N–1A.

[80] *Cf.* Instruction 7 to Item 4 of Form N–1A.

should be required in the summary section?

• Should we require disclosure regarding portfolio holdings in the summary section? If so, what information should be required, *e.g.*, top five holdings, top 10, top 25? If we require portfolio holdings disclosure, should any funds be exempt from the requirement, *e.g.*, money market funds or exchange-traded funds? Should new funds be exempt from this requirement? Are there circumstances where this disclosure might not be useful to investors or where additional information regarding a fund's investment exposures would be necessary to make the portfolio holdings information useful, for example, where the top 10 holdings represent a relatively small percentage of the fund's total holdings? Should we require funds to disclose additional information such as the percentage of a fund's net assets represented by the combined top 10 holdings? Should we require a fund to disclose its holdings that represent a specified percentage of the fund's holdings?

• Would the proposed exception to the requirement to list the top 10 holdings that would permit a fund to list an amount not exceeding five percent of the total value of the portfolio holdings in one amount as "Miscellaneous securities" adequately guard against the premature release of certain positions that could lead to front-running and other predatory trading practices? If not, what other protections would be necessary? Is the "Miscellaneous securities" exception necessary and appropriate?

• Should we require funds to present tables, charts, or graphs that depict portfolio holdings by reasonably identifiable categories (*e.g.*, industry sector, geographic region, credit quality, maturity, etc.) either instead of, or in addition to, top 10 portfolio holdings? [81]

• Should, as proposed, a fund having three or more sub-advisers be required to identify only those sub-advisers that are (or are reasonably expected to be) responsible for the management of a significant portion of the fund's net assets? Are there situations where this would result in the disclosure of no sub-advisers and, if so, would this be appropriate? Should we, as proposed, provide that a "significant portion" of a fund's net assets generally would be deemed to be 30% or more of a fund's net assets? Should a higher or lower percentage or some other measure or standard be used?

• Should any or all of the information that we propose to require in the summary section regarding the purchase and sale of fund shares be permitted rather than required? Should any of this information be prohibited from being included in the summary section?

• Should any additional information regarding the purchase and sale of fund shares be required to be disclosed in the summary section? For example, should information regarding policies and procedures with respect to frequent purchases and redemptions of fund shares be disclosed in the summary, or is it appropriate to maintain the location of this information elsewhere in the prospectus?

• Is there any additional tax information that should be included in the summary section?

• Should we require disclosure regarding the compensation of broker-dealers, banks, and other financial intermediaries in the summary section? Should we permit this disclosure to be omitted or modified in any context? For example, should a fund be permitted to omit this disclosure if the fund is marketed directly to investors or where a transaction is initiated by an investor and not on the basis of a financial intermediary's recommendation? Should funds be permitted to modify this disclosure to reflect the fact that some transactions may be initiated by an investor and not on the basis of a financial intermediary's recommendation?

• In addition or as an alternative to directing customers to ask salespersons or visit a financial intermediary's Web site for more information about intermediary compensation, should the summary prospectus direct customers to other sources of information? Do all financial intermediaries that distribute mutual funds have Internet Web sites? Is information typically available on the Web sites of financial intermediaries? Should the Commission require that such information be made available on intermediaries' Web sites?

• Should we require or permit a fund to include its ticker symbol in the summary section? Alternatively, should we require or permit a fund to include its ticker symbol on the front or back cover page of the statutory prospectus or SAI or elsewhere in those documents?

3. Conforming and Technical Amendments to Form N–1A

The proposed amendments to Form N–1A would require adding new items to the form and revising and renumbering certain existing items. We are proposing conforming amendments to Form N–1A in order to update the table of contents and the various references to Form N–1A items contained within the form. We are also proposing technical amendments to Form N–1A to update the Commission's telephone number and address.[82]

B. New Delivery Option for Mutual Funds

1. Use of Summary Prospectus and Satisfaction of Statutory Prospectus Delivery Requirements

The Commission is proposing to replace rule 498, the current voluntary profile rule, with a new rule that would permit the obligation under the Securities Act to deliver a statutory prospectus with respect to mutual fund securities to be satisfied by sending or giving a Summary Prospectus and providing the statutory prospectus online. In addition, the new rule would require a fund to send the statutory prospectus in paper or by e-mail upon request. The Summary Prospectus would be required to contain the key information that is included in the new summary section of the statutory prospectus in the same order that would be required in the statutory prospectus. As discussed above, the proposal is intended to take advantage of technological developments and the expanded use of the Internet in order to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available to investors today. The proposal provides for a layered approach to disclosure in which key information is sent or given to the investor and more detailed information is provided online and, upon request, is sent in paper or by e-mail.

The proposed new rule would provide that any obligation under Section 5(b)(2) of the Securities Act [83] to have a statutory prospectus precede or accompany the carrying or delivery of a mutual fund security in an offering registered on Form N–1A is satisfied if (1) a Summary Prospectus is sent or given no later than the time of the carrying or delivery of the fund security; [84] and, if any other materials accompany the Summary Prospectus,

[81] *Cf.* Item 22(d)(2) of Form N–1A; Investment Company Act Release No. 26372, *supra* note 49, 69 FR at 11251–52 (requiring similar disclosures in shareholder reports).

[82] Proposed Item 1(b)(3) of Form N–1A.

[83] 15 U.S.C. 77e(b)(2).

[84] A fund could rely upon existing Commission guidance, which typically requires affirmative consent from individual investors, to send or give a Summary Prospectus by electronic means. *See* Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]; Securities Act Release No. 7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)].

the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials; [85] (2) the Summary Prospectus that is sent or given satisfies the rule's requirements at the time of the carrying or delivery of the fund security; and (3) the conditions set forth in the rule, which require a fund to provide the statutory prospectus and other information on the Internet in the manner specified in the rule, are satisfied.[86] Section 5(b)(2) of the Securities Act makes it unlawful to deliver a security for purposes of sale or for delivery after sale "unless accompanied or preceded" by a statutory prospectus. Under the rule, delivery of the statutory prospectus for purposes of Section 5(b)(2) would be accomplished by sending or giving a Summary Prospectus and by providing the statutory prospectus and other required information online. Failure to comply with the rule's requirements for sending or giving a Summary Prospectus and providing the statutory prospectus and other information online would mean that the rule could not be relied on to meet the Section 5(b)(2) prospectus delivery obligation. Absent satisfaction of the Section 5(b)(2) obligation by other means, a Section 5(b)(2) violation would result. The rule would also require a fund to send the statutory prospectus upon request. This requirement would not be a condition to reliance on the rule, and failure to send the requested statutory prospectus would result in a violation of the rule (as opposed to a violation of Section 5(b)(2)).

The proposed rule also would provide that a communication relating to an offering registered on Form N–1A that is sent or given after the effective date of a mutual fund's registration statement (other than a prospectus permitted or required under Section 10 of the Securities Act) shall not be deemed a prospectus under Section 2(a)(10) of the Securities Act if (1) it is proved that prior to or at the same time with the communication a Summary Prospectus was sent or given to the person to whom the communication was made; and, if any other materials accompany the Summary Prospectus, the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials; (2) the Summary Prospectus that was sent or given satisfies the rule's requirements at the time of the communication; and (3) the conditions set forth in the rule, which require a fund to provide the statutory prospectus and other information on the Internet in the manner specified in the rule, are satisfied.[87] This provision is similar to Section 2(a)(10)(a) of the Securities Act, which provides that a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of Section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with the communication a written prospectus meeting the requirements for a statutory prospectus at the time of the communication was sent or given to the person to whom the communication was made.[88] Pursuant to this provision, communications that would otherwise be considered "prospectuses" subject to the liability provisions of Section 12(a)(2) of the Securities Act are not deemed prospectuses and are not subject to Section 12(a)(2) if they are preceded or accompanied by the statutory prospectus.[89] Similarly, under our proposal, communications that are preceded or accompanied by a Summary Prospectus would not be deemed to be prospectuses and would not be subject to Section 12(a)(2) if all the conditions of the proposed rule are met. These communications would remain subject to the general antifraud provisions of the federal securities laws.[90]

The current proposal is intended to create a disclosure regime that is tailored to the unique needs of mutual fund investors in a manner that provides ready access to the information that investors need, want, and choose to review in connection with a mutual fund purchase decision. In crafting this proposal, the Commission has drawn upon recent initiatives that have harnessed technology in order to provide investors with better access to information.[91] The current proposal provides for a layered approach to disclosure in which key information is sent or given to the investor and more detailed information is provided online and, upon request, is sent in paper or by e-mail. This is intended to provide investors with better ability to choose the amount and type of information to review, as well as the format in which to review it (online or paper). In addition, the provision of a Summary Prospectus containing key information about the fund, coupled with online provision of more detailed information, should aid investors in comparing funds. The requirement that the Summary Prospectus be given greater prominence than, and not be bound together with, accompanying materials is intended to prevent the Summary Prospectus from being obscured by accompanying sales materials and highlight for investors the concise, balanced presentation of the Summary Prospectus. In short, we believe that the proposal has the potential to result in funds providing investors with more usable information than they receive today in a format that investors are more likely to use and understand. Under the proposal, an investor could choose to receive the statutory prospectus in the same paper format that would be provided today.

We request comment generally on the proposed prospectus delivery option for mutual funds and specifically on the following issues:

- Should we permit mutual funds to meet their prospectus delivery obligations in the manner provided in the proposed rule? Does this approach adequately protect investors and provide them with material information about the fund? Does the proposed approach adequately protect investors who have no Internet access or limited Internet access or who prefer not to receive information about mutual fund investments over the Internet? Should we make any other changes with respect to prospectus delivery obligations?
- Are there other approaches that would provide mutual fund investors with key information in a user-friendly format?
- Should we permit mutual funds to meet their prospectus delivery obligations by filing with the Commission and/or by posting online without giving or sending a Summary Prospectus?
- Should mutual fund investors have the ability to opt out of the rule

[85] *Cf.* 17 CFR 240.17a–5(c)(5)(ii) (requiring a financial disclosure document to be "given prominence in the materials delivered to customers of the broker or dealer").

[86] Proposed rule 498(c).

[87] Proposed rule 498(d). This provision would be limited to a mutual fund Summary Prospectus that satisfies the terms of the proposed rule and would not apply in the case of any issuer other than a mutual fund.

[88] 15 U.S.C. 77b(a)(10)(a).

[89] 15 U.S.C. 77*l*(a)(2). Section 12(a)(2) of the Securities Act imposes liability for materially false or misleading statements in a prospectus or oral communication, subject to a reasonable care defense.

[90] *See, e.g.*, Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].

[91] Exchange Act Release No. 56135, *supra* note 25, 72 FR 42222 (shareholder choice regarding proxy materials); Exchange Act Release No. 55146 (Jan. 22, 2007) [72 FR 4148 (Jan. 29, 2007)] (Internet availability of proxy materials); Securities Act Release No. 8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] (securities offering reform).

permanently and thereafter receive a paper copy of any statutory prospectus? How could this be implemented in practice? For example, how would a mutual fund that had no prior relationship with an investor be apprised of the investor's decision to opt out? Could such an opt-out provision be implemented on a fund or fund complex basis?

- Should we require that the Summary Prospectus be given greater prominence than other materials that accompany the Summary Prospectus and that the Summary Prospectus not be bound together with any of those materials? Are any clarifications of these requirements needed? Are the requirements workable in all situations? Should we permit a Summary Prospectus to be included within a newspaper or magazine? Should we impose additional requirements to encourage the prominence and separateness of a Summary Prospectus, when provided in paper, at an Internet Web site, or by e-mail, such as requiring that the Summary Prospectus be at the top of a list of documents provided electronically or on top of a group of documents provided in paper?

2. Content of Summary Prospectus

The proposed rule sets forth the content requirements that a Summary Prospectus must satisfy.[92] Similar to a current profile, a Summary Prospectus meeting the requirements of the rule would be deemed to be a prospectus that is authorized under Section 10(b) of the Securities Act and Section 24(g) of the Investment Company Act for the purposes of Section 5(b)(1) of the Securities Act.[93] A Summary Prospectus meeting these content requirements could be used to offer securities of the fund pursuant to Section 5(b)(1) even if the other conditions of the rule were not satisfied. The failure to satisfy these other conditions would, however, preclude the use of the Summary Prospectus for the other purposes described in proposed rule 498, including for purposes of satisfying, in part, a fund's obligation under Section 5(b)(2) to deliver a statutory prospectus. In these circumstances, the Section 5(b)(2) obligation to deliver a fund's statutory prospectus would have to be met by means other than the proposed rule or a Section 5(b)(2) violation would result.

General

The proposal generally would require the Summary Prospectus to include the same information as the summary section of the statutory prospectus in the same order as would be required in the statutory prospectus.[94] This key information about investment objectives, costs, and risks would form the body of the Summary Prospectus.

The Summary Prospectus would not be permitted to omit any of the required information or to include additional information except as described below. A document that omits information required in a Summary Prospectus or includes additional information not permitted by the rule would not be a Summary Prospectus under the proposed rule and could not be used under the proposed rule for any purpose, including meeting the obligation to deliver a fund's statutory prospectus.[95]

In addition, a Summary Prospectus would be permitted to describe only one fund, but could describe multiple classes of a single fund.[96] These restrictions are similar to restrictions with respect to the proposed summary section of the statutory prospectus.[97] Like those restrictions, they are intended to result in a presentation of key fund information that is concise and easy to read.

Cover Page or Beginning of Summary Prospectus

The proposed Summary Prospectus would be required to include the following information on the cover page or at the beginning of the Summary Prospectus:

- The fund's name and the share classes to which the Summary Prospectus relates;
- A statement identifying the document as a "Summary Prospectus"; and
- The approximate date of the Summary Prospectus's first use.

In addition, the cover page or beginning of the Summary Prospectus would be required to include the following legend:

"Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks. You can find the Fund's prospectus and other information about the Fund online at [_____]. You can also get this information at no cost by calling [_____] or by sending an e-mail request to [_____]."[98]

In addition, the legend could include a statement to the effect that the Summary Prospectus is intended for use in connection with a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code, a tax-deferred arrangement under Section 403(b) or 457 of the Internal Revenue Code, or a variable contract as defined in Section 817(d) of the Internal Revenue Code and is not intended for use by other investors.[99]

The legend would be required to provide an Internet address, toll free (or collect) telephone number, and e-mail address that investors can use to obtain the statutory prospectus and other information.[100] The legend would also be permitted to indicate that the statutory prospectus and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the fund may be purchased or sold. The Internet address at which the statutory prospectus and other information are available would not be permitted to be the address of the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR").[101] The address would be required to be specific enough to lead investors directly to the statutory prospectus and other required information, rather than to the home page or other section of the Web site on which the materials are posted.[102] The Web site could be a central site with prominent links to each required document.[103]

[92] Proposed rule 498(b). Proposed rule 498(a) would define terms used in the rule. The Appendix to this release contains a hypothetical Summary Prospectus, which is provided solely for illustrative purposes.

[93] Proposed rule 498(b); rule 498(a)(2) [17 CFR 230.498(a)(2)]. Section 10(b) of the Securities Act authorizes the Commission to adopt rules permitting the use of a prospectus for the purposes of Section 5(b)(1) that summarizes information contained in the statutory prospectus. Section 24(g) of the Investment Company Act authorizes the Commission to permit the use of a prospectus under Section 10(b) of the Securities Act to include information the substance of which is not included in the statutory prospectus. 15 U.S.C. 77j(b); 15 U.S.C. 77e(b)(1); 15 U.S.C. 80a–24(g).

[94] Proposed rule 498(b)(2)(i).

[95] A Summary Prospectus that omits certain information required by the proposed rule or includes additional information not permitted by the proposed rule could be deemed to be a prospectus under Section 10(b) of the Securities Act for purposes of Section 5(b)(1) of the Securities Act pursuant to rule 482 under the Securities Act [17 CFR 230.482] if the conditions of that rule are met.

[96] Proposed rule 498(b)(4).

[97] *See supra* introductory text to Section II.A. and Section II.A.1.

[98] Proposed rule 498(b)(1).

[99] Proposed rule 498(b)(1)(iv)(B).

[100] Proposed rule 498(b)(1)(iv)(A).

[101] *Cf.* rule 14a–16(b)(3) under the Exchange Act [17 CFR 240.14a–16(b)(3)] (similar requirement in rules relating to Internet availability of proxy materials).

[102] For a description of the information required to be available at the Web site and a discussion of the manner in which such information must be available, *see infra* Section II.B.3.

[103] *Cf.* Exchange Act Release No. 55146, *supra* note 91, 72 FR at 4153–54 n. 79 (use of central site with prominent links in electronic delivery of proxy materials).

Updating Requirements

The proposed Summary Prospectus rule, similar to the current voluntary profile rule, would require that average annual total returns and yield be provided as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use.[104] This information would be required to be updated as of the end of each succeeding calendar quarter not later than one month after the completion of the quarter.[105]

The proposed Summary Prospectus rule also would require the top 10 portfolio holdings information to be provided as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use or the immediately prior calendar quarter if the most recent calendar quarter ended less than one month prior to the Summary Prospectus's first use.[106] This is intended to ensure that there is a lag of at least one month between the end of a calendar quarter and disclosure of the top 10 holdings as of the end of that quarter. The portfolio holdings information would be required to be updated on the same schedule as the performance information, at the end of each succeeding calendar quarter not later than one month after the completion of the quarter. The one-month lag is intended to eliminate any potential harm to fund shareholders from predatory trading practices, such as trading ahead of funds or "front-running," that could result from more immediate disclosure of fund portfolio holdings. In order to minimize the number of times that a fund would be required to update its Summary Prospectus, the proposed rule would also permit a one-month lag in the required quarterly update of performance information, so that both items could be updated on the same schedule.

The Commission is proposing to require quarterly updating of performance and portfolio holdings information in the Summary Prospectus because we believe that providing updated information in a concise, summary document may contribute significantly to the usefulness of the document to investors and their financial intermediaries. A fund could reflect the updated performance and portfolio holdings information in the Summary Prospectus by affixing a label or sticker, or by other reasonable means, and would not be required to reprint the Summary Prospectus each quarter.[107] This is intended to minimize the costs of quarterly updating while still resulting in an up-to-date and concise, unified presentation of key information. A fund would not be required to update the performance and portfolio holdings information in its statutory prospectus on a quarterly basis. The proposed rule would provide that the failure to include in a statutory prospectus or registration statement the quarterly updated performance and portfolio holdings information required to be included in a Summary Prospectus would not, solely by virtue of inclusion of the information in a Summary Prospectus, be considered an omission of material information required to be included in the statutory prospectus or registration statement.[108]

Notwithstanding the quarterly updating requirements, the proposed rule would provide that, for purposes of satisfying a fund's prospectus delivery obligations, a Summary Prospectus that satisfies the requirements of the rule at the time it is sent or given shall be deemed to continue to satisfy those requirements until the earlier of the date on which (1) the information in the Summary Prospectus is required to be updated for any purpose other than the required quarterly updates to the portfolio holdings and performance information; or (2) the fund is required to file an annual updating amendment to its registration statement for the purpose of updating its statutory prospectus to satisfy the requirements of Section 10(a)(3) of the Securities Act.[109] Thus, if a fund's Summary Prospectus had previously been provided to an investor, persons could continue to rely on the rule with respect to their prospectus delivery obligations to that investor without providing a new Summary Prospectus that merely reflects the quarterly updates to top 10 holdings and performance information. The previously provided Summary Prospectus would continue to be deemed current for purposes of the proposed rule until the fund is required to update the Summary Prospectus for some other purpose or is required to file an annual updating amendment to its registration statement. This would be true in the case of existing investors as well as new investors. Today, some funds choose to send an updated statutory prospectus to all of their existing shareholders once each year in order to meet their prospectus delivery obligations with respect to those shareholders who purchase additional shares of the fund during the coming year. Under the proposed rule, a fund could instead send an updated Summary Prospectus to its shareholders once each year, so long as the only changes to the Summary Prospectus during the year are the required quarterly updates to holdings and performance information and so long as the other conditions of the rule are satisfied.

We request comment generally on the proposed content and updating requirements of the Summary Prospectus and specifically on the following issues:

- Should the Summary Prospectus be required to include the same information as the summary section of the statutory prospectus in the same order as required in the statutory prospectus? Should any of the information that we propose to require in the Summary Prospectus not be required? Should any additional information, such as additional information from the statutory prospectus, SAI, or annual or semi-annual report, be required to be included in the Summary Prospectus?
- Should we, as proposed, prohibit the Summary Prospectus from including information that is not explicitly permitted? What effect would this prohibition have on the length, usability, and completeness of a Summary Prospectus? If we include this prohibition, should we make any exceptions to the prohibition?
- Should we restrict the number of funds or share classes that may be included in a Summary Prospectus? Would including multiple funds in a Summary Prospectus make it too long and confusing, and would it decrease the likelihood that investors would use the Summary Prospectus? Or would including multiple funds in a Summary Prospectus contribute to investors'

[104] Proposed rule 498(b)(2)(ii).

[105] *Cf.* rule 498(c)(2)(iii) (current voluntary profile rule requiring quarterly updating of return information as soon as practicable after the completion of each calendar quarter). The date of the performance information would be required to be included along with the performance information. The proposed rule would not require a fund to explain in the Summary Prospectus the reasons for any change in the securities market index used for comparison purposes in the performance presentation. *Cf.* Instruction 2(c) to proposed Item 4(b)(2) of Form N–1A (requiring this explanation in proposed summary section of prospectus). Proposed rule 498(b)(2)(ii).

[106] Proposed rule 498(b)(2)(iii).

[107] Proposed Instruction to proposed rule 498(b)(2)(ii) and (iii).

[108] Proposed rule 498(e)(2). *Cf.* rule 408(b) under the Securities Act [17 CFR 230.408(b)].

[109] Proposed rule 498(e)(1). Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)] generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use. The effect of this provision is to require mutual funds to update their prospectuses annually to reflect current cost, performance, and other financial information.

ability to compare those funds? Are there groups of funds that should be permitted to be included in a single Summary Prospectus even if we generally prohibit multiple fund Summary Prospectuses? Instead of, or in addition to, restricting the number of funds in a Summary Prospectus, should we impose page limits on Summary Prospectuses (*e.g.*, three or four pages)? If so, what should the page limits be? How would we address situations in which a fund may conclude that it cannot provide the information required in the Summary Prospectus within a prescribed page limit?

- Is the information that we propose to require on the cover page or at the beginning of the Summary Prospectus appropriate? Should we include any additional information or eliminate any of the information that we have proposed to include?
- Is the proposed legend sufficient to notify investors of the availability and significance of the statutory prospectus and other information about the fund and how to obtain this information? Should the legend include greater detail about the information that is available? Will the legend adequately inform investors of the various means for obtaining additional information about a fund? Are the proposed requirements for the Web site address where additional information is available adequate to ensure that the Web site and the additional information will be easy to locate?
- Should we require or permit a fund to include its ticker symbol in the Summary Prospectus? If so, where should such information be included (*e.g.*, at the beginning or on the cover page)?
- Will a one-month lag in reporting top 10 portfolio holdings sufficiently protect against potential dangers to shareholders, such as the dangers of front-running? Would a shorter or longer delay be more appropriate?
- Should we require the performance and portfolio holdings information in the Summary Prospectus to be updated quarterly? How would the inclusion of performance and portfolio holdings information that is not updated quarterly affect the usefulness of a Summary Prospectus to investors? How would the inclusion of performance and portfolio holdings information that is not updated quarterly affect investors' perceptions of the Summary Prospectus and investors' interest in reviewing the information in the Summary Prospectus?
- Would semi-annual updating of performance and portfolio holdings information in the Summary Prospectus be more appropriate or should we require annual updating only?
- Would any concerns relating to investor confusion, liability, or other matters arise from requiring quarterly updating of performance and portfolio holdings information in the Summary Prospectus but not in the statutory prospectus? Have any such concerns resulted in practice for funds that currently use the voluntary profile, where performance information is required to be updated on a quarterly basis, but such information is not required to be updated quarterly in the statutory prospectus?
- If we require quarterly or semi-annual updating of performance and portfolio holdings information in the Summary Prospectus, should we also require this information to be updated quarterly or semi-annually in the statutory prospectus?
- What, if any, burdens would be associated with the requirement for quarterly updating of performance and portfolio holdings information? Would any burdens be reduced due to the availability of "on demand" printing technologies in which copies of documents are printed only as needed? How would any such burdens differ from those associated with quarterly updates to sales materials that include performance information, which funds routinely undertake today? If we require quarterly updating, how can we minimize any associated burdens?
- Should the rule require funds to provide quarterly updated performance and portfolio holdings information on an Internet Web site and/or on a toll-free telephone line instead of updating the Summary Prospectus quarterly? If so, should the Summary Prospectus be required to disclose the availability of the updated information? Would the addition of a legend to this effect, and the elimination of the updated information, affect the usefulness and perceived usefulness of the Summary Prospectus to investors, as well as their willingness to read and use the Summary Prospectus?
- Would it be appropriate for the proposed rule to deem a previously provided Summary Prospectus to be current notwithstanding subsequent quarterly updates to performance and portfolio holdings information? If we require quarterly updating, should we include any additional safe harbors or provide for a cure provision in cases where a Summary Prospectus that lacks a required quarterly update has been inadvertently distributed?

3. Provision of Statutory Prospectus, SAI, and Shareholder Reports

In addition to sending or giving a Summary Prospectus, a person that decides to rely on the proposed rule to meet its statutory prospectus delivery obligations with respect to a mutual fund's securities would be required to provide the statutory prospectus itself on the Internet, together with other information, in the manner specified by the rule.[110] In order to maximize both the accessibility and usability of the information, the statutory prospectus would be required to be provided in two ways, by posting on an Internet website and by sending the information directly to any investor requesting a copy. Sending the information directly to any investor would not, however, be a condition of reliance on the rule.

Under the proposal, the statutory prospectus and other information would be required to be provided through the Internet as follows. The fund's current Summary Prospectus, statutory prospectus, SAI, and most recent annual and semi-annual reports to shareholders would be required to be accessible, free of charge, at the Web site address specified on the cover page or at the beginning of the Summary Prospectus.[111] These documents would be required to be accessible on or before the time that the Summary Prospectus is sent or given and current versions of the documents would be required to remain on the Web site through the date that is at least 90 days after (i) in the case of reliance on the proposed rule to satisfy the obligation to have a statutory prospectus precede or accompany the carrying or delivery of a mutual fund security, the date that the mutual fund security is carried or delivered, and (ii) in the case of reliance on the proposed rule to deem a communication with respect to a mutual fund security not to be a prospectus under Section 2(a)(10) of the Securities Act, the date that the communication is sent or given.[112] This requirement is designed to ensure continuous access to the information from the time the Summary Prospectus is sent or given until at least 90 days after the date of delivery of a security or communication in reliance on the proposed rule.

We are proposing to require that the information on the Internet be presented in a format that:

[110] Proposed rule 498(c)(3), (d)(3), and (f).

[111] The cost to access the Internet itself (*e.g.*, monthly subscription to an Internet service provider) and related costs, such as the cost of printer ink, would not be considered costs for purposes of determining whether information is accessible, free of charge.

[112] Proposed rule 498(f)(1).

- Is convenient for both reading online and printing on paper;[113]
- permits persons accessing the statutory prospectus or SAI to move directly back and forth between the table of contents in that document and each section of that document referenced in the table of contents;[114] and
- permits persons accessing the Summary Prospectus to move directly back and forth between each section of the Summary Prospectus and (A) any section of the statutory prospectus and SAI that provides additional detail concerning that section of the Summary Prospectus; or (B) tables of contents in the statutory prospectus and SAI that prominently display the sections within those documents that provide additional detail concerning information contained in the Summary Prospectus.[115]

The first requirement is designed to ensure that the information provided over the Internet will be user-friendly, both online and when printed. This imposes on the online information a standard of usability that is comparable to the readability of a paper document. The latter two requirements are intended to result in online information that is in a better and more usable format than the same information when provided in paper. The first of those two requirements would allow an investor or other user to move directly between the table of contents in the prospectus or SAI and the related sections of that document, by a single mouse click and without the need to flip through multiple pages of a paper document. The second requirement would allow an investor to move back and forth between related sections of the Summary Prospectus, statutory prospectus, and SAI, either directly through a single mouse click or indirectly by means of a table of contents in the prospectus or SAI, in which case two mouse clicks would be required.

In addition, persons accessing the Web site must be able to permanently retain, through downloading or otherwise, free of charge, an electronic version of the Summary Prospectus, statutory prospectus, SAI, and shareholder reports in a format that meets the first two requirements enumerated in the preceding paragraph.[116] That is, the format must be convenient for both reading online and printing on paper, and persons accessing the downloaded version of the statutory prospectus or SAI must be able to move directly back and forth between the table of contents in that document and each section of that document referenced in the table of contents. An electronic version that is retained by an investor would not be required to incorporate links between the Summary Prospectus, statutory prospectus, and SAI because we anticipate that there may be technical difficulties associated with keeping these links current.

Compliance with all of the conditions in the proposed rule regarding Internet posting would be required in order to meet prospectus delivery obligations under Section 5(b)(2) of the Securities Act. Failure to comply with any of the conditions would be a violation of Section 5(b)(2) unless the fund's statutory prospectus is delivered by means other than reliance on the rule. The Commission recognizes, however, that there may be times when, due to system outages or other technological issues, a fund is temporarily not in compliance with the Internet posting requirements of the rule, despite the fund's best efforts. For that reason, the proposed rule includes a safe harbor provision stating that the conditions regarding Internet availability of a fund's Summary Prospectus, statutory prospectus, SAI, and shareholder reports would be deemed to be met, notwithstanding the fact that those materials are not available for a time in the manner required, provided that the fund has reasonable procedures in place to ensure that those materials are available in the required manner. In addition, a fund would be required to take prompt action to ensure that those materials become available in the manner required, as soon as practicable following the earlier of the time at which the fund knows or reasonably should have known that the documents are not available in the manner required.[117]

The Commission believes that every investor in a fund taking advantage of the proposed prospectus delivery regime should be permitted to choose whether to review a fund's information on the Internet or whether to receive that information directly, either in paper or through an e-mail. For that reason, the proposed rule would require that a fund (or financial intermediary through which shares of the fund may be purchased or sold) send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of the fund's statutory prospectus, SAI, and most recent annual and semi-annual shareholder report to any person requesting such a copy within three business days after receiving a request for a paper copy. Similarly, a fund (or financial intermediary through which shares of the fund may be purchased or sold) would also be required to send, at no cost to the requestor and by e-mail, an electronic copy of the fund's statutory prospectus, SAI, and most recent annual and semi-annual shareholder report to any person requesting such a copy within three business days after receiving a request for an electronic copy.[118] This requirement, which is intended to ensure that an investor has prompt access to the required information in the form that he or she prefers, is based on a similar, existing requirement with respect to requests for the SAI and shareholder reports.[119]

The requirement that a fund send a paper or electronic copy of the statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports, as applicable, to a person requesting such a copy would not be a condition to reliance on the rule to satisfy a fund's delivery obligations under Section 5(b)(2) of the Securities Act or the provision that a communication shall not be deemed a prospectus under Section 2(a)(10) of the Securities Act. A person that complied with all other aspects of the proposed rule would not violate Section 5(b)(2) of the Securities Act if the fund failed to send the required paper or electronic copy of the statutory prospectus, SAI, or most recent shareholder reports. This failure would, however, constitute a violation of the Commission's rules.

We request comment generally on the proposal to require that persons relying on the proposed rule provide the fund's statutory prospectus and other information on the Internet and upon request and specifically on the following issues:

- Should we permit the fund's current statutory prospectus and other information to be provided in the manner specified in the proposed rule? For what period of time should persons relying on the rule be required to retain this information on an Internet Web site?
- Should we require that the information on the Internet Web site be

[113] Proposed rule 498(f)(2)(i). *See also* 17 CFR 240.14a–16(c) (requiring materials to be presented in a format convenient for both reading online and printing in paper when delivering proxy materials electronically).

[114] Proposed rule 498(f)(2)(ii).

[115] Proposed rule 498(f)(2)(iii).

[116] Proposed rule 498(f)(3).

[117] Proposed rule 498(f)(4). This safe harbor would not be available to a fund that repeatedly fails to comply with the proposed rule's Internet posting requirements or that is not in compliance with the requirements over a prolonged period.

[118] Proposed rule 498(g).

[119] *See* Instruction 3 to Item 1 of Form N–1A (requiring the SAI and shareholder reports to be sent within three business days of receipt of a request).

in a format that is convenient for both reading online and printing on paper?

• Are the proposed requirements regarding the ability to move back and forth within the statutory prospectus and the SAI from the table of contents to relevant sections, and between the Summary Prospectus, statutory prospectus, and SAI appropriate and useful? Would it be difficult or expensive for funds to comply with these requirements? Will these requirements help investors to navigate effectively within and between these documents and contribute to a more useful presentation of information than is possible through paper documents?

• Are there steps that the Commission should take to enhance the accessibility to the general public of fund Summary Prospectuses, statutory prospectuses, and other information that would be provided on an Internet Web site pursuant to the proposed rule? How can we enhance the availability of this information to investors, intermediaries, analysts, and others who are researching funds?

• What steps can the Commission take to enhance electronically provided documents? Should we require funds to tag any of the information in the Summary Prospectus or statutory prospectus using the eXtensible Business Reporting Language ("XBRL") taxonomy that was recently developed by the Investment Company Institute and is being used in the Commission's voluntary data tagging program? [120] Should the Commission make the submission of tagged risk/return summary information using the XBRL taxonomy mandatory in order for funds to rely upon the proposed rule amendments? If so, should funds be required to tag all of the risk/return summary information or should only certain information be required to be tagged, such as fees and expenses, past performance, and other numerical information? Are there any features, such as the ability to search documents for words and phrases, that we should require in documents that are provided electronically?

• Should we require that persons accessing the Web site at which the required documents are posted must be able to permanently retain, through downloading or otherwise, free of charge, an electronic version of such documents? Should we require that documents downloaded from the Internet Web site must retain links that enable a user to move readily within a single document, as proposed? Would this proposed requirement present any technological difficulties? Should we also require that downloaded documents retain links that enable a user to move readily between related passages of multiple documents? Would it be technologically feasible to meet such a requirement? What would the costs be of complying with requirements that downloaded documents retain links, either within a single document or between related passages of multiple documents?

• Does the proposed rule appropriately address the possibility of inadvertent technological problems that may arise from time to time when information is provided electronically? Should funds having technological issues be required to disclose on the Web site that the information was not available for a time in the manner required and explain the reasons for the failure to comply? If so, how long should such information be required to be retained on the Web site? Should funds that are not able to comply for a prolonged period, perhaps a week or more, due to technological issues, or that are not able to comply repeatedly over a long period due to such reasons, be required to notify the Commission and/or investors?

• Are the requirements for sending the statutory prospectus, SAI, and annual and semi-annual shareholder reports in paper and electronically appropriate? Should funds be required to send a paper or electronic copy of the fund's statutory prospectus, SAI, and most recent annual and semi-annual shareholder report to any person requesting such a copy within three business days after receiving a request for a copy? Would a longer or shorter period be appropriate? Will these requirements, together with the requirements for providing information on the Internet, as well as the proposed Summary Prospectus, enhance investors' ability to access, understand, and use the information that they receive?

• Should the requirements to send the statutory prospectus, SAI, and shareholder reports be a condition to reliance on the rule? Should failure to comply with these requirements result in a violation of Section 5(b)(2) of the Securities Act? Alternatively, should the failure to comply with these requirements be a violation of Commission rules that does not result in an inability to rely on the rule or a violation of Section 5(b)(2)?

• Should we require funds or other persons that use the proposed prospectus delivery regime to retain any additional records beyond those required by our current rules? Should we expressly require those persons to retain proof that the statutory prospectus, SAI, and annual and semi-annual reports were available on the Internet as required by the rule and records of the dates that documents were requested, along with the dates such documents were sent?

4. Incorporation by Reference

Permissible Incorporation by Reference

The proposed rule would permit a fund to incorporate by reference into the Summary Prospectus information contained in its statutory prospectus and SAI, as well as any information from its most recent shareholder report, subject to the conditions described below. [121] A fund would not be permitted to incorporate by reference into the Summary Prospectus information from any other source. In addition, a fund could not incorporate by reference any of the information described above that is required to be included in the Summary Prospectus. [122] Information could be incorporated by reference into the Summary Prospectus only by reference to the specific document that contains the information, and not by reference to another document that incorporates the information by reference. [123] Thus, if a fund's statutory prospectus incorporates the fund's SAI by reference, the Summary Prospectus could not incorporate information in the SAI simply by referencing the statutory prospectus but would be required to reference the SAI directly. [124]

Incorporation by reference of information from a fund's statutory prospectus, SAI, and shareholder report would be permitted only if the fund satisfies the conditions described in Section II.B.3, above, which prescribe the means by which the incorporated information is provided to investors. [125]

[120] Recently, the Commission adopted rule amendments to enable mutual funds to submit information from the risk/return summary section of their prospectuses using interactive data under the Commission's voluntary interactive data program. *See* Securities Act Release No. 8823, *supra* note 24.

[121] Proposed rule 498(b)(3)(i) and (ii).

[122] Proposed rule 498(b)(3)(ii)(B).

[123] Proposed rule 498(b)(3)(ii)(C).

[124] *Cf.* Item 10(d) of Reg. S–K [17 CFR 229.10(d)] ("Except where a registrant or issuer is expressly required to incorporate a document or documents by reference * * * reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document."). General Instruction D.2 of Form N–1A makes Item 10(d) of Regulation S–K applicable to incorporation by reference into a fund's statutory prospectus.

[125] Proposed rule 498(b)(3)(ii)(A) and (f). As discussed in Section II.B.3, this would not include

In addition, if a fund incorporates information by reference, the Summary Prospectus legend would be required to clearly identify the document from which the information is incorporated, including the date of the document, and explain that any information that is incorporated from the SAI or shareholder report may be obtained, free of charge, in the same manner as the statutory prospectus.[126] A fund that failed to comply with any of these conditions could not incorporate information by reference into its Summary Prospectus. A fund that provides the incorporated information to investors by complying with all of the conditions, including the conditions for providing the incorporated information through the Internet, would not also be required to send or give the incorporated information together with the Summary Prospectus.[127] While a fund would be required to send a paper or electronic copy of the incorporated information upon request, failure to do so would not preclude or nullify the incorporation by reference. It would, however, be a violation of Commission rules.

We are proposing to permit incorporation by reference in the Summary Prospectus in order to further our goal of creating a layered disclosure regime. The proposed rule requires provision to investors of all of the information in the Summary Prospectus, statutory prospectus, SAI, and shareholder reports. By using multiple means to provide this information and using technology to provide information in a layered format, the proposal is intended to facilitate investors' ability to effectively choose to review the particular information in which they are interested. Indeed, each investor in a fund taking advantage of the proposed prospectus delivery regime can also choose the particular means of receiving information because all of the information will be required to be promptly sent to any requesting investor in paper or electronically. We are proposing to permit incorporation by reference in the Summary Prospectus of the statutory prospectus, SAI, and information from the fund's most recent shareholder report because, under the proposal, these documents would be provided at the same time, though by different means.

Our determination to propose to permit incorporation of information into the Summary Prospectus is different from the determination we made with respect to the profile and is made in light of technological advances that have occurred during the intervening years. When the Commission adopted the profile almost 10 years ago, it did not permit incorporation by reference of the statutory prospectus into the profile and stated its belief that allowing this incorporation would be inconsistent with the purpose of the profile and not in the public interest. The Commission noted that the profile was designed to provide summary information about a fund in a self-contained format and that permitting incorporation by reference of the statutory prospectus would be inconsistent with the profile being a self-contained document.

By contrast, we do not intend the Summary Prospectus to be a self-contained document, but rather one element in a layered disclosure regime that results in the simultaneous provision of information to investors through multiple means. Indeed, we intend the Summary Prospectus to provide investors with better, more usable access to the information in the statutory prospectus, SAI, and shareholder reports than they have today. The expansion in Internet access and the strides in the speed and quality of Internet connections since the profile rule was adopted in 1998 have made this possible.[128] At the moment that an investor receives a Summary Prospectus, he or she is also able to immediately review the full statutory prospectus, SAI, and shareholder reports online. Perhaps even more significantly, an investor could make use of required links between the Summary Prospectus and the other documents in order to move quickly and easily between the documents to review particular information of interest to the investor without having to read through lengthy, unrelated information. In addition, under our proposal, an investor who chooses to review the incorporated information in paper or electronically would be sent a copy of this information, promptly upon request. As a result of these considerations, we believe that it is consistent with the purpose of the Summary Prospectus and in the public interest to permit incorporation by reference of the statutory prospectus, SAI, and shareholder reports into the Summary Prospectus, subject to the conditions to incorporation contained in the proposed rule.

Effect of Incorporation by Reference

Proposed rule 498 would provide that, for purposes of rule 159 under the Securities Act,[129] information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with proposed rule 498. This proposal addresses the question of when information that is incorporated into the Summary Prospectus under proposed rule 498 is conveyed for purposes of Sections 12(a)(2) and 17(a)(2) of the Securities Act.

Under Section 12(a)(2) of the Securities Act, sellers have liability to purchasers for offers or sales by means of a prospectus or oral communication that includes an untrue statement of material fact or omits to state a material fact that makes the statements made, based on the circumstances under which they were made, not misleading. Securities Act Section 17(a)(2) is a general antifraud provision which makes it unlawful for any person in the offer and sale of a security to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

As we have previously stated, we interpret Section 12(a)(2) and Section 17(a)(2) as meaning that, for purposes of assessing whether at the time of sale (including a contract of sale) a prospectus or oral communication or statement includes or represents a material misstatement or omits to state a material fact necessary in order to make the prospectus, oral communication, or statement, in light of the circumstances under which it was

the requirement to send or give a paper or electronic copy of the requested information upon request.

[126] Proposed rule 498(b)(1)(iv)(B) and (b)(3)(ii)(A).

[127] Proposed rule 498(b)(3)(i). *Cf.* Gen. Instr. D.1(b) of Form N–1A (permitting a fund to incorporate by reference any or all of the SAI into the statutory prospectus without delivering the SAI with the prospectus).

[128] In 1998, one study indicated that over one-third of Americans over the age of 16 used the Internet. Associated Press Online, *One-Third of Americans Use Internet* (Aug. 25, 1998). As noted above, more recent surveys show that Internet use among American adults is at an all time high, with approximately three quarters identifying themselves as Internet users. *See supra* note 22. Moreover, very few American homes had broadband connections in 1998. Robert J. Samuelson, *Broadband's Faded Promise*, The Washington Post, at A35 (Dec. 12, 2001) (noting that almost no American homes had broadband in 1998). In contrast, as of early 2007, nearly half of all adult Americans had a broadband connection at home. *See supra* note . *See also* Jesse Noyes, *Broadband signals death of dial-up*, The Boston Herald, at 028 (Aug. 7, 2005) (noting that dial-up speeds have remained constant at 56K since 1998 and cannot go higher, while broadband speeds have grown from 1 megabyte per second to 100 megabytes a second in the past six years).

[129] 17 CFR 230.159.

made, not misleading, information conveyed to the investor only after the time of sale (including a contract of sale) should not be taken into account.[130] In furtherance of this interpretation, we adopted rule 159 under Sections 12(a)(2) and 17(a)(2). Consistent with our interpretation, rule 159 provides that, for purposes of Section 12(a)(2) and 17(a)(2) only, and without affecting any other rights under those sections, for purposes of determining at the time of sale (including the time of the contract of sale) whether a prospectus, oral statement, or a statement[131] includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading,[132] any information conveyed to the purchaser only after the time of sale will not be taken into account.

Proposed rule 498 provides that, for purposes of rule 159 (and therefore for purposes of Sections 12(a)(2) and 17(a)(2)), information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with the proposed rule. For purposes of Sections 12(a)(2) and 17(a)(2), whether or not information has been conveyed to an investor at or prior to the time of the contract of sale is a facts and circumstances determination.[133] We have designed the requirements of proposed rule 498 specifically so that the facts and circumstances surrounding receipt by a person of the Summary Prospectus will, in fact, result in the effective conveyance to that person of any information that is incorporated by reference into the Summary Prospectus in compliance with the conditions of the rule. For that reason, proposed rule 498 expressly states that, for purposes of rule 159, information incorporated into a Summary Prospectus is conveyed not later than the time that the Summary Prospectus is received.[134] The relevant facts and circumstances required by rule 498 include actual receipt of the Summary Prospectus; incorporation by reference of the information into the Summary Prospectus and clear disclosure of how the incorporated information may be obtained free of charge; and continuous Internet availability of the incorporated information in formats that permit permanent retention, are convenient for both reading online and in paper, and meet the document linking requirements of the rule.[135]

Proposed rule 498 addresses one particular set of facts and circumstances under rule 159 and does not address any other situations. For purposes of Sections 12(a)(2) and 17(a)(2), whether or not information has been conveyed to an investor at or prior to the time of the contract of sale remains a facts and circumstances determination. Proposed rule 498 does not address any facts and circumstances relating to operating companies or any other issuers that are not mutual funds, nor does it address any information other than information incorporated by reference into a mutual fund Summary Prospectus in accordance with the proposed rule.

The Commission believes that a person that provides investors with a mutual fund Summary Prospectus in good faith compliance with the proposed rule would be able to rely on Section 19(a) of the Securities Act[136] against a claim that the Summary Prospectus did not include information that is disclosed in the fund's statutory prospectus, whether or not the fund incorporates the statutory prospectus by reference into the Summary Prospectus.[137] Section 19(a) protects a defendant from liability for actions taken in good faith in conformity with any rule of the Commission.[138]

We request comment generally on the proposal to permit incorporation by reference into the Summary Prospectus and specifically on the following issues:

- Does the proposed rule provide adequate means of providing investors with the information in the Summary Prospectus, statutory prospectus, SAI, and shareholder reports? Will these means result in more or less effective provision of information than our current rules require? Do these means of providing information adequately protect investors?
- Should we permit a fund to incorporate by reference into the proposed Summary Prospectus any or all of the information contained in its statutory prospectus and SAI and any or all of the information from the fund's most recent shareholder report? Is there any other information that should be permitted to be incorporated by reference into the proposed Summary Prospectus?
- Should we permit a fund to incorporate by reference into the proposed Summary Prospectus any of the information that is required to be included in the Summary Prospectus?
- Should we require materials that are incorporated by reference into the Summary Prospectus to be available online in the manner described in Section II.B.3 above? Are there any additional conditions that we should impose on the ability to incorporate by reference into the Summary Prospectus? Should satisfaction of the requirement to send a paper or electronic copy of materials incorporated by reference be a condition to the ability to incorporate by reference or should we, as proposed, provide that failure to satisfy this requirement is a rule violation that does not affect the ability to incorporate by reference?
- Is the proposal relating to rule 159 appropriate? Should conveyance of information incorporated in the Summary Prospectus be tied to the time of receipt of the Summary Prospectus, the time that the Summary Prospectus is sent or given, or some other time? Does proposed rule 498 adequately ensure that information incorporated by reference into a Summary Prospectus will have been effectively conveyed to a person who receives the Summary Prospectus? Does the proposal relating to rule 159 provide sufficient clarity regarding the effect of incorporation by reference into a Summary Prospectus and the impact on liability of using a Summary Prospectus?

5. Filing Requirements for the Summary Prospectus

The Commission is proposing to require each Summary Prospectus to be filed with the Commission on EDGAR

[130] *See* Securities Act Release No. 8591, 70 FR at 44766, *supra* note 91.

[131] These include a prospectus or oral statement in the case of Section 12(a)(2), or a statement to which Section 17(a)(2) is applicable.

[132] Or, in the case of Section 17(a)(2), any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

[133] *See* Securities Act Release No. 8591, 70 FR at 44766, *supra* note 91. Such information could include information in the issuer's registration statement and prospectuses for the offering in question, the issuer's Exchange Act reports incorporated by reference therein, or information otherwise disseminated by means reasonably designed to convey such information to investors. Such information also could include information directly communicated to investors.

[134] Whether or not any or all of the incorporated information was conveyed to an investor *prior to* the time that the Summary Prospectus was received would be a facts and circumstances determination.

[135] *Cf.* Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928, 37930 (Aug. 22, 1983)] (discussing incorporation by reference of the SAI into the statutory prospectus); *see also White* v. *Melton*, 757 F. Supp. 267, 272 (S.D.N.Y. 1991) (addressing effect of incorporation by reference of the SAI into the statutory prospectus).

[136] 15 U.S.C. 77s(a).

[137] *Cf.* Investment Company Act Release No. 23065, *supra* note 30, 63 FR at 13972 (similar Commission statement in context of profile).

[138] *See also* Section 38(c) of the Investment Company Act [15 U.S.C. 80a–37(c)] (similar provision under Investment Company Act).

no later than the fifth business day after the date that it is first used.[139] We are not proposing to require that a fund file the Summary Prospectus before it is first used because the content of the Summary Prospectus would be essentially identical to the content of the summary section of the statutory prospectus, which is filed prior to its first use. We are proposing that the Summary Prospectus be filed after it is first used in order to ensure that the Commission's EDGAR system contains a copy of every Summary Prospectus that is actually being used. A Summary Prospectus that is filed on EDGAR will be publicly available; however, a fund could not rely on this availability to satisfy the requirements to post the document online discussed in Section II.B.3. above.

Section 10(b) of the Securities Act provides that a prospectus permitted under that section shall, unless provided otherwise by Commission rule, be filed as part of the registration statement but shall not be deemed part of the registration statement for the purposes of Section 11 of the Securities Act.[140] In accordance with Section 10(b), a Summary Prospectus would be filed as part of the registration statement, but would not be deemed a part of the registration statement for purposes of Section 11 of the Securities Act. A Summary Prospectus would be subject to the stop order and other administrative provisions of Section 8 of the Securities Act.[141] This is in addition to the Commission's power under Section 10(b) of the Securities Act to prevent or suspend the use of the Summary Prospectus, regardless of whether or not it has been filed.[142]

We request comment generally on the proposed filing requirements for the Summary Prospectus and specifically on the following issues:

- Should we require pre-use filing of the Summary Prospectus? Should we require post-use filing?
- Should the Summary Prospectus be filed as part of the registration statement and be subject to the stop order and other administrative provisions of Section 8 of the Securities Act? Should the Summary Prospectus be subject to Section 11 liability? Would investors be adequately protected under the proposed rule, or should we provide additional investor protections?

C. Technical and Conforming Amendments

We are proposing the following conforming amendments to rule 482 under the Securities Act, the investment company advertising rule, to reflect the proposed Summary Prospectus and the proposed elimination of the voluntary profile.

- The scope section of rule 482 would be revised to clarify that the rule does not apply to a Summary Prospectus or to a communication that, pursuant to proposed rule 498, is not deemed a "prospectus" under section 2(a)(10) of the Securities Act.[143]
- For funds using the Summary Prospectus, the legend required in a rule 482 advertisement regarding the availability of the statutory prospectus would be required to include references to the Summary Prospectus.[144]
- The provision addressing the use of rule 482 advertisements together with a profile that includes an application to purchase shares is deleted as unnecessary.[145]

We are also proposing amendments to various cross-references to Form N–1A in our rules and forms to reflect changes that we are proposing to Form N–1A. These include cross-references in rule 485 under the Securities Act, rules 304 and 401 of Regulation S–T, Form N–4 under the Securities Act and the Investment Company Act, and Form N–14 under the Securities Act. We are also proposing to revise rule 159A under the Securities Act to refer to a Summary Prospectus rather than a profile.

We request comment generally on the proposed technical and conforming amendments.

D. Compliance Date

If the proposed amendments to Form N–1A are adopted, the Commission expects to provide for a transition period after the effective date in order to give funds sufficient time to prepare their registration statements under the amendments. If we adopt the proposed amendments to Form N–1A, we expect to require all initial registration statements on Form N–1A, and all post-effective amendments that are annual updates to effective registration statements on Form N–1A, filed six months or more after the effective date, to comply with the proposed amendments to Form N–1A. We expect that we would not permit a person to rely on rule 498 to satisfy its obligations to deliver a mutual fund's statutory prospectus unless the fund is also in compliance with the amendments to Form N–1A. The Commission requests comment on the proposed compliance date.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might affect the proposals contained in this release.

IV. Special Request for Comments From Investors

We are proposing changes that are intended to provide you, the investor, with concise information about mutual funds that is easier to use than the mutual fund prospectuses available today.

Under our proposals, every mutual fund prospectus would include a summary section, consisting of the following key information about the fund: (1) Investment objectives; (2) costs; (3) principal investment strategies, risks, and performance; (4) top 10 portfolio holdings; (5) identity of investment advisers and portfolio managers; (6) brief purchase, sale, and tax information; and (7) information about broker compensation and conflicts. Our intent is that this information would be presented in three or four pages at the front of the prospectus.

We are also proposing to permit mutual funds to send or give you the summary information while providing the prospectus online and, upon your request, sending you a paper copy of the prospectus. The proposal is intended to provide you with key information that is easier to use while using the power of the Internet to make the more detailed information in the prospectus available to you at all times. You would still be able to get the prospectus in paper by asking for it.

We want to know your views on our proposals and on the questions we have asked throughout this release. In

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[139] Proposed rule 497(k). We are also proposing to delete the reference to the profile from rule 497(a) [17 CFR 230.497(a)].

[140] 15 U.S.C. 77j(b) and 77k. Congress provided a specific exception from liability under Section 11 of the Securities Act for summary prospectuses under Section 10(b) of the Securities Act in order to encourage the use of summary prospectuses. L. Loss & J. Seligman, *Securities Regulation*, § 2–b–5 (3d ed. 2006) (citing S. Rep. 1036, 83d Cong., 2d Sess. 17–18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). Information in the Summary Prospectus that is also contained in the statutory prospectus would be part of the registration statement for the purposes of Section 11 of the Securities Act as a result of its inclusion in the statutory prospectus.

[141] 15 U.S.C. 77h; H.R. Rep. 1542, 83d Cong., 2d Sess., 1954 U.S.C.C.A.N. 2973, 2982 (1954) (noting that the Commission's authority to suspend the use of a defective summary prospectus under Section 10(b) "is intended to supplement the stop-order powers of the Commission under [S]ection 8").

[142] 15 U.S.C. 77j(b).

[143] Proposed amendment to rule 482(a).

[144] Proposed rule 482(b)(1).

[145] Proposed rule 482(c).

addition, we want to know your views generally regarding the mutual fund prospectuses that you currently receive. What improvements would you suggest that would make it easier to read and understand mutual fund prospectuses? Would you find it useful to receive a short summary of the key information in a mutual fund prospectus, with the more detailed information readily available to you online and sent to you upon your request? Is the information that we propose to include in the summary section of the prospectus the information that you need to make an informed investment decision? If not, what information would you like to see in the summary?

V. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[146] We are submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[147] The titles for the collections of information are: (1) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies;" and (2) "Summary Prospectus for Open-End Management Investment Companies." Form N–1A (OMB Control No. 3235–0307) under the Securities Act and the Investment Company Act[148] is used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act. The Commission is proposing a new collection of information under proposed rule 498 under the Securities Act to be used by mutual funds that choose to send or give a Summary Prospectus to investors.[149] 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.

We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

The proposed amendments to Form N–1A, if adopted, would require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. Proposed rule 498, if adopted, would provide a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor.

We are also proposing technical and conforming amendments to rules 159A and 482 under the Securities Act that, if adopted, would reflect the proposed Summary Prospectus and the elimination of the voluntary profile, along with amendments that would update the cross references to Form N–1A contained in rule 485 under the Securities Act, rules 304 and 401 of Regulation S–T, Form N–4 under the Securities Act and the Investment Company Act, and Form N–14 under the Securities Act.[150] These technical and conforming amendments do not constitute a collection of information because we are not altering the legal requirements of these rules and forms.

Finally, proposed amendments to rule 497, if adopted, would provide the requirements for filing Summary Prospectuses with the Commission. These amendments would not constitute a separate collection of information under rule 497 because the burden required by these amendments is part of the collection of information under proposed rule 498.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end management investment companies registered or registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

Much of the information that would be required in the summary section of the prospectus is currently required in a fund's prospectus. However, our proposal would require new information regarding a fund's portfolio holdings and the compensation received by financial intermediaries which would entail costs, including the costs of compiling and reviewing the information. Thus, we estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement or the initial creation of a post-effective amendment to a registration statement by 16 hours. We further estimate that subsequent post-effective amendments to a registration statement would require, on average, approximately 4 burden hours per portfolio to update and review the information. Because the PRA estimates represent the average burden over a three-year period, we estimate the average hour burden for one portfolio to comply with the proposed amendments to be approximately 8 hours.[151]

We received 2,397 initial registration statements and post-effective amendments on Form N–1A during our 2006 fiscal year covering approximately 8,726 portfolios. Thus, the incremental hour burden resulting from the proposed amendments relating to the proposed summary section disclosure would be 69,808 hours (8 hours x 8,726 portfolios). If the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of registration statements and post-effective amendments to Form N–1A would be 1,197,088 hours (69,808 hours + 1,127,280 hours).[152]

Rule 498

Proposed rule 498 would contain collection of information requirements. The likely respondents to this information collection are open-end management investment companies registered or registering with the Commission. Under proposed rule 498, use of the Summary Prospectus would be voluntary, but the rule's requirements regarding provision of the statutory prospectus would be

[146] 44 U.S.C. 3501 *et seq.*

[147] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[148] 17 CFR 239.15A; 17 CFR 274.11A.

[149] If proposed rule 498 is adopted, a request would be submitted to OMB to remove the collection of information for current rule 498.

[150] *See supra* notes 143 through 145 and accompanying text.

[151] (16 hours in the first year + 4 hours in the second year + 4 hours in the third year) ÷ 3 years = 8 hours.

[152] Currently, the approved annual hour burden for preparing and filing registration statements on Form N–1A is 1,127,280 hours based on the previous estimate of 2,602 responses, referencing a total of 7,025 portfolios. We currently have outstanding a request for extension of the previously approved collection for Form N–1A. If our request is granted, the annual hour burden will be adjusted accordingly.

mandatory for funds that elect to send or give a Summary Prospectus in reliance upon proposed rule 498. The information provided under proposed rule 498 would not be kept confidential.

Our preliminary estimate is that proposed rule 498 would not impose any substantial new information collection requirements with respect to the initial preparation of a Summary Prospectus beyond those discussed above in connection with the collection of information for Form N–1A. It, however, would impose a ½ hour burden annually associated with the compilation of the additional information required on a cover page or at the beginning of the Summary Prospectus. Proposed rule 498 also would impose hour burdens associated with the quarterly updating of the Summary Prospectus, as well as hour burdens associated with the posting of a fund's Summary Prospectus, statutory prospectus, SAI, and most recent report to shareholders on an Internet Web site. The Commission estimates the average hour burden for one portfolio to comply with the proposed quarterly updating requirements to be approximately 3 hours per quarter, or 9 hours annually for each of the three subsequent quarters.[153] The Commission also estimates that the average hour burden for one portfolio to comply with the proposed Internet Web site posting requirements would be 1 hour per quarter, or 4 hours annually. The Summary Prospectus is voluntary, so the percentage of funds that will choose to provide it is uncertain. Given this uncertainty, we have assumed that 75% of all funds would choose to send or give a Summary Prospectus.[154] Assuming 75% of all funds file a Summary Prospectus, the total annual hour burden for filing and updating Summary Prospectuses and posting the required disclosure documents to an Internet Web site pursuant to proposed rule 498 would be 88,351 hours ((½ hour + 9 hours + 4 hours) × (.75 × 8,726 portfolios)).

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–28–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–28–07, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC 20549–0609. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

To implement this improved disclosure framework, we are proposing amendments to Form N–1A that would require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. As discussed in the release, this key information has been identified by the participants in the June 2006 roundtable, by investor research, and by a variety of commentators as the information that is important to most investors in selecting mutual funds.[155] The key information would be required to be presented in plain English in a standardized order. Our intent is that this information would be presented succinctly, in three or four pages at the front of the prospectus.

We are also proposing a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. Our intent in proposing this option is that funds take full advantage of the Internet's search and retrieval capabilities in order to enhance the provision of information to mutual fund investors.

Today's proposal has the potential to revolutionize the provision of information to the millions of mutual fund investors who rely on mutual funds for their most basic financial needs. The proposal is intended to help investors who are overwhelmed by the choices among thousands of available funds described in lengthy and legalistic documents to readily access key information that is important to an informed investment decision. At the same time, by harnessing the power of technology to deliver information in better, more usable formats, the proposals can help those investors, their intermediaries, third party analysts, the financial press, and others to locate and compare facts and data from the wealth of more detailed disclosures that are available.

A. Benefits

Possible benefits of the proposed amendments include enhanced

[153] In addition to the annual filing of a registration statement on Form N–1A, quantified above, a fund that chooses to provide Summary Prospectuses would have to update those Summary Prospectuses for each of the subsequent 3 quarters of the year.

[154] We believe our estimate of 75% is reasonable given the potential benefits of our proposed amendments to funds. A recent study of industry participants found that 64% of respondents are very likely to consider using a short-form prospectus and that 31% are somewhat likely to consider using a short-form prospectus. *See* Forrester Consulting Study commissioned on behalf of NewRiver, Inc., *The Short-Form Prospectus*, at 5 (Oct. 2007), available at: *http://www1.newriver.com/news_events/news/new_research_finds_mutual_fund_providers_overwhelmingly_support_the_securities_and_exchange_commissions_proposed_shortform_prospectus_rule.php*. Study respondents included brokerage firms, banks, insurance companies, mutual fund families, and money management and financial advisory firms. *Id.* at 4.

[155] *See supra* notes 16 and 20.

disclosure of information needed to make informed investment decisions about mutual funds, more rapid dissemination of information over the Internet, and reduced printing and mailing costs.

Millions of individual Americans invest in shares of mutual funds, relying on mutual funds for their retirements, their children's educations, and their other basic financial needs.[156] These investors face a difficult task in choosing among the more than 8,000 available mutual funds.[157] Fund prospectuses, which have been criticized by investor advocates, representatives of the fund industry, and others as long and complicated, often prove difficult for investors to use efficiently in comparing their many choices. Current Commission rules require mutual fund prospectuses to contain key information about investment objectives, risks, and expenses that, while important to investors, can be difficult for investors to extract. Prospectuses are often long, both because they contain a wealth of detailed information and because prospectuses for multiple funds are often combined in a single document. Too frequently, the language of prospectuses is complex and legalistic, and the presentation formats make little use of graphic design techniques that would contribute to readability.

Our proposal would require investment information that is key to an investment decision to be provided in a streamlined document with other more detailed information provided elsewhere. The provision of this information to investors in concise, user-friendly formats, as proposed, would allow investors to compare information across funds and may assist them in making better informed portfolio allocation decisions in line with their investment goals.

Our proposal also would provide the additional benefits of increased Internet availability of fund information, by providing layered disclosure that allows investors to move back and forth between the information within the Summary Prospectus and more detailed information within other disclosure documents. These benefits include, among other things, facilitating comparisons among funds and replacing one-size-fits-all disclosure with disclosure that each investor can tailor to his or her own needs. In recent years, access to the Internet has greatly expanded,[158] and significant strides have been made in the speed and quality of internet connections.[159] Advances in technology offer a promising means to address the length and complexity of mutual fund prospectuses by streamlining the key information that is provided to investors, ensuring that access to the full wealth of information about a fund is immediately and easily accessible, and providing the means to present all information about a fund online in a format that facilitates comparisons of key information, such as expenses, across different funds and different share classes of the same fund. Technology has the potential to replace the current one-size-fits-all mutual fund prospectus with an approach that allows investors, their financial intermediaries, third party analysts, and others to tailor the wealth of available information to their particular needs and circumstances.

Significant technological advances have increased both the market's demand for more timely disclosure and the ability of funds to capture, process, and disseminate information. The proposal would enable funds to take greater advantage of the Internet to more rapidly communicate and deliver information to investors. Accordingly, investor demand for information could be satisfied through relatively inexpensive mass dissemination of the information through electronic means. We anticipate that demand for the information in the statutory prospectus and SAI will increase as access to that information becomes easier through the use of layered disclosure that allows investors, their financial intermediaries, third party analysts, and others to tailor the wealth of available information to their particular needs and circumstances.

The Summary Prospectus proposal also would provide cost savings to funds. We believe that funds will benefit from being able to send or give a Summary Prospectus and not having to print and send statutory prospectuses to all investors and prospective investors. We expect that funds would experience cost savings with respect to both annual mailings to their current shareholders and mailings made in connection with a purchase of fund shares. We estimate that funds distribute 290,000,000 statutory prospectuses annually to their current shareholders and another 64,500,000 in connection with fund purchases.[160] We estimate that the cost savings for annual mailings would be approximately $114,187,500[161] and that the cost savings for purchase mailings would be approximately $75,465,000.[162] These cost savings would be reduced by the costs of sending the statutory prospectus to those investors who request it. We estimate that approximately 10% of 64,500,000 investors making purchases will request that a statutory prospectus be sent to them.[163] We estimate that the cost of sending statutory prospectuses to requesting investors would be

[156] *See supra* note 13.

[157] *See supra* note 14.

[158] *See supra* note 22.

[159] *See supra* note 23.

[160] Often, a fund will mail a statutory prospectus to each of its shareholders annually in addition to mailing a statutory prospectus in response to a purchase of fund shares. For purposes of this analysis, our best estimate of the number of statutory prospectuses mailed annually is based on the approximately 290,000,000 shareholder accounts in 2006. *See* Investment Company Institute, *2007 Investment Company Fact Book*, at 101, *supra* note 13 (noting 289,997,000 shareholder accounts at the end of 2006). We recognize that: some shareholders may currently receive their fund documents electronically; some households where more than one fund investor resides will only receive one copy of the statutory prospectus per household; some accounts may hold more than one fund; and not all funds send out statutory prospectuses annually. Therefore, the actual number of prospectuses mailed annually may be higher or lower than our estimate.

Our estimate of the number of statutory prospectuses sent out to fulfill a fund's prospectus delivery obligation upon purchase is based on information provided by Broadridge Financial Solutions ("Broadridge"). We evaluated the information provided and believe the data likely represent relevant information and costs. We solicit comment on our estimates that incorporate information provided by Broadridge.

[161] Our annual estimates are derived from information we received from Broadridge. Broadridge estimates that the average cost of a statutory prospectus printed in a full production run is $0.27 and that the average cost to mail a statutory prospectus by bulk mail is $0.255. The cost savings with respect to annual mailings were calculated by multiplying the costs of printing and mailing a statutory prospectus by the 290,000,000 statutory prospectuses mailed annually reduced to reflect our estimate that 75% of funds will elect to send Summary Prospectuses (($0.27 for the printing of a statutory prospectus + $0.255 for the mailing of a statutory prospectus) × 290,000,000 statutory prospectuses × 75% of funds).

[162] For purposes of our estimate, we used Broadridge's printing cost estimate of $0.35 that is blended to reflect full production printing runs and digital print on demand documents. This blended rate reflects the fact that a fund may run out of statutory prospectuses produced in a full production run and may have to print additional statutory prospectuses on demand. Broadridge also estimated that the average cost to mail a statutory prospectus by first class mail is $1.21. The cost savings with respect to purchase mailings were calculated by multiplying the costs of printing and mailing a statutory prospectus by 64,500,000 statutory prospectuses mailed in response to a fund purchase reduced to reflect our estimate that 75% of funds will elect to send Summary Prospectuses (($0.35 for the printing of a statutory prospectus + $1.21 for the mailing of a statutory prospectus) × 64,500,000 statutory prospectuses × 75% of funds).

[163] We believe that the actual number of investors who would request that a statutory prospectus be sent to them may actually be lower given that investors may also request delivery by e-mail and our understanding that currently only a small percentage of investors request that a copy of a fund's SAI be sent to them.

$7,546,500.[164] Therefore, we estimate the annual cost savings will be approximately $182,106,000,[165] or approximately $27,826 per portfolio.[166]

The full potential for savings may be reduced by several factors.[167] First, some mutual funds might not elect to send or give Summary Prospectuses pursuant to proposed rule 498. Second, to the extent that some shareholders do not have access to the Internet and request paper copies of prospectuses from the fund, the savings in printing and mailing costs would be reduced. Third, the requirement that funds supply requesting shareholders with paper copies within three business days may limit funds' ability to reduce printing costs by causing them to maintain inventories of paper copies. Technological advances, such as the ability to print documents on demand, however, may alleviate the need for such a paper inventory.

We expect that funds would face the highest level of uncertainty about the extent of investors' continued use of printed statutory prospectuses in the first year after adoption of the proposed amendments. We expect that, as funds gain familiarity with the continued use of printed prospectuses and as shareholders increasingly turn to the Internet for fund information, the number of requested paper copies will decline, as will funds' tendency to print more copies than ultimately are requested.

We request comment on these benefits and any other potential benefits. Specifically, we request comment on our data and analysis, including any data on the printing and mailing cost savings that may be realized as a result of our proposed amendments, if adopted. Are there any other factors that would reduce the costs to funds? We also request comment on the current number of paper copies of the SAI requested by investors and the number of paper copies of the statutory prospectus funds estimate that investors would request if our proposed amendments are adopted.

B. Costs

While our proposal would result in significant cost savings for funds, we believe that there will be costs associated with the proposal. These include the costs for funds to compile and review the new information required by our proposal and to post the required disclosure documents on an Internet Web site. These costs may include both internal costs (for attorneys and other non-legal staff, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and mailing of the Summary Prospectus). We estimate that the external costs for printing and mailing of the Summary Prospectus would be $104,542,500[168] or approximately $15,974 per portfolio.[169] There may also be external costs connected with the review of the required disclosure by outside counsel; however, we expect those costs to be minimal given that most of the information required is already required in a fund's prospectus.

For purposes of the PRA, we have estimated that the proposed new disclosure requirements, assuming 75% of funds choose to send or give a Summary Prospectus, would add: (1) 69,808 hours to the annual burden of preparing Form N–1A; and (2) 88,351 hours to the annual burden of preparing and using a Summary Prospectus under proposed rule 498. We estimate that this additional burden would equal total internal costs of $39,935,148 annually[170] or approximately $6,102 per portfolio.[171]

Our proposal also may result in potential costs for individual fund investors. These include any paper and printing costs for those investors who choose to print posted materials. We estimate that approximately 5% of investors making fund purchases will print statutory prospectuses at home at an estimated cost of $2.03 per statutory prospectus.[172] Based on these assumptions, the proposal is estimated to produce annual home printing costs of $4,910,063.[173]

As these costs are difficult to quantify, we request comment on the magnitude of these potential costs and whether there are any other additional potential costs, including whether any such costs would affect different classes of investors differently. We also request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposal were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act[174] and Section 2(b) of the

[164] For purposes of this estimate, we used the blended printing rate of $0.35 and the average first class mail rate of $1.21. The costs were calculated by multiplying the costs of printing and mailing a statutory prospectus by the 64,500,000 prospectuses sent out in response to fund purchases reduced to reflect our estimate that 75% of funds will elect to send Summary Prospectuses and 10% of investors will request a statutory prospectus be mailed to them (($0.35 for the printing of a statutory prospectus + $1.21 for the mailing of a statutory prospectus) × 64,500,000 statutory prospectuses × 75% of funds × 10% of requesting investors).

[165] (($114,187,500 cost savings for annual mailings + $75,465,000 cost savings for purchase mailings) − $7,546,500 cost of sending requested statutory prospectuses).

A recent study of industry participants estimated cost savings of approximately $300,000,000 per year. *See The Short-Form Prospectus*, *supra* note 154, at 6.

[166] $182,106,000 ÷ (8,726 portfolios × 75%).

[167] Our estimates above take into account these possible reductions in cost savings.

[168] Our estimate is derived from estimates provided to us by Broadridge. Broadridge estimates that the average cost to print a Summary Prospectus on demand is $0.11. We note that some funds may receive reduced bulk printing rates; however, Broadridge informed us that it believes that the majority of funds will print the Summary Prospectus on demand. With respect to mailing costs for a Summary Prospectus, Broadridge estimates that Summary Prospectuses sent out annually will be mailed at the bulk rate of $0.255 and that Summary Prospectuses sent out in connection with fund purchases will be mailed first class at a rate of $0.41. Our estimate, therefore, was derived as follows: (($0.11 for printing a Summary Prospectus on demand + $0.255 for bulk mail) × 290,000,000 Summary Prospectuses estimated to be sent out annually × 75% of funds) + (($0.11 for printing a Summary Prospectus on demand + $0.41 for first class mail) × 64,500,000 prospectuses estimated to be sent out in response to a fund purchase × 75% of funds).

[169] $104,542,500 ÷ (8,726 funds × 75%).

[170] This cost increase is estimated by multiplying the total annual hour burden (158,159 hours) by the estimated hourly wage rate of $252.50. The estimated wage figure is based on published rates for compliance attorneys and senior programmers, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $261 and $244, respectively. *See* Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2006 (Sept. 2006). The estimated wage rate is further based on the estimate that attorneys and programmers would divide time equally, resulting in a weighted wage rate of $252.50 (($261 × .50) + ($244 × .50)).

[171] $39,935,148 ÷ (8,726 funds × 75%).

[172] Our estimate of potential home printing costs depends on data provided by Lexecon and ADP in response to Exchange Act Release No. 55146, *supra* note. *See* letter from ADP. The Lexecon data was included in the ADP comment letter. To calculate home printing costs, we estimate that 100% of prospectuses are printed in black and white at a cost of $0.035 per page for ink and that the average prospectus length is approximately 45 pages at a cost of $0.010 per page for the paper (($0.035 for ink + $0.010 for paper) × 45 pages).

[173] (64,500,000 purchasers × 75% of funds × 5% of printing investors) × $2.03).

[174] 15 U.S.C. 80a–2(c).

Securities Act [175] require the Commission, when engaging in rulemaking that requires it 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.

The proposed amendments are intended to provide enhanced disclosure regarding mutual funds. These changes may improve efficiency. The enhanced disclosure requirements may enable shareholders to make more informed investment decisions, which could promote efficiency. We anticipate that the proposed rules, if adopted, would increase efficiency at mutual funds by providing an alternative to the printing and mailing of paper copies of statutory prospectuses.

We anticipate that our proposal will improve investors' ability to make informed investment decisions and, therefore, lead to increased efficiency and competitiveness of the U.S. capital markets. Similarly, the ability of investors to directly locate the information they seek regarding a fund or funds through the use of the Internet may result in more fund investors or existing investors investing in more funds.

We anticipate that this increased market efficiency also may promote capital formation by improving the flow of information between funds and their investors. Specifically, we believe that the proposal will: (1) Facilitate greater availability of information to investors and the market with regard to all funds; (2) reflect the increased importance of electronic dissemination of information, including the use of the Internet; and (3) promote the capital formation process.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on any anti-competitive effects of the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[176] It relates to the Commission's proposed amendments to Form N–1A under the Securities Act and the Investment Company Act and to proposed new rule 498 under the Securities Act.

A. Reasons for, and Objectives of, Proposed Amendments

We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

B. Legal Basis

The Commission is proposing amendments to Form N–1A pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37]. The Commission is proposing amendments to rule 498 under the Securities Act pursuant to authority set forth in Sections 5, 6, 7, 10, 19, and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s, and 77z–3] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity 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.[177] Approximately 131 mutual funds registered on Form N–1A meet this definition.[178]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require all funds, including funds that are small entities, to provide key information in a summary section of their statutory prospectuses. In addition, the proposed amendments provide a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. No funds would be required to send or give a Summary Prospectus. However, for purposes of the PRA, we estimate that 75% of all funds would choose to send or give a Summary Prospectus pursuant to proposed rule 498 both to enhance investor access to information about a fund and to take advantage of the cost savings that a fund may realize. If a fund elects the proposed new delivery regime for prospectuses, it would be required to prepare, file, and send or give a Summary Prospectus to investors. Moreover, a fund would be required to update its Summary Prospectus quarterly. The required disclosure in the Summary Prospectus is information that generally would be readily available to funds. A fund would be required to post the statutory prospectus along with other required documents to an Internet Web site and provide either a paper or an e-mail copy of its statutory prospectus to requesting shareholders.

For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the hour burden of filings on Form N–1A by 69,808 hours annually and for proposed rule 498 by 88,351 hours annually. We estimate that this additional burden would increase total internal costs per fund, including funds that are small entities, by approximately $6,102 per portfolio annually.[179] Also for purposes of the Paperwork Reduction Act, we have estimated that the benefit of decreased printing and other costs would decrease total external costs per fund, including funds that are small entities, by approximately $27,826 per portfolio annually.[180]

The Commission solicits comment on these estimates and the anticipated effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

[175] 15 U.S.C. 77b(b).

[176] 5 U.S.C. 603 *et seq.*

[177] 17 CFR 270.0–10.

[178] This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

[179] These figures are based on an estimated hourly wage rate of $252.50. *See supra* note 170. We note that this estimate includes a one-time burden of 16 hours to create the summary section of the statutory prospectus.

[180] *See supra* note 166 and accompanying text.

F. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. We believe that the proposed amendments to Form N–1A would provide investors with enhanced disclosure regarding funds. This enhanced disclosure would allow investors to better assess their investment decisions. Different disclosure requirements for funds that are small entities may create the risk that investors in these funds would be less able to evaluate funds and less able to compare different funds, thereby lessening the ability of investors to make informed choices among funds. We believe it is important for the disclosure that would be required by the proposed amendments to Form N–1A to be provided to investors in all funds, not just funds that are not considered small entities.

Proposed rule 498, if adopted, would provide a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. Because the proposed rule is designed to provide investors with more accessible disclosure, an exemption from the proposed rule or separate requirements for small entities would not achieve the goal of more accessible disclosure for the investors in those funds.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other funds. We also have endeavored to clarify, consolidate, and simplify disclosure for all funds, including those that are small entities. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the context of prospectus disclosure requirements.

G. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposal on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[181] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Authority

The Commission is proposing amendments to Form N–1A and Form N–4 pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37]. The Commission is proposing amendments to Form N–14 pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)]. The Commission is proposing amendments to rules 159A, 482, 485, 497, and 498 under the Securities Act and to rules 304 and 401 of Regulation S-T pursuant to authority set forth in Sections 5, 6, 7, 10, 19, and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s, and 77z–3] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 230 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 232 and 239

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.159A [Amended]

2. Section 230.159A is amended by revising the word "profile" in paragraph (a)(2) to read "summary prospectus".

3. Section 230.482 is amended by:

a. Revising paragraph (a) before the note; and

b. Revising paragraphs (b)(1) and (c).

The revisions read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) *Scope of rule.* This section applies to an advertisement or other sales material (*advertisement*) with respect to

[181] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (*1940 Act*), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) or § 230.498(d) or to a summary prospectus under § 230.498. An advertisement that complies with this section, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

Note to paragraph (a): * * *

(b) * * *

(1) *Availability of additional information.* An advertisement must include a statement that advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus and, if available, the summary prospectus contain this and other information about the investment company; identifies a source from which an investor may obtain a prospectus and, if available, a summary prospectus; and states that the prospectus and, if available, the summary prospectus should be read carefully before investing.

* * * * *

(c) *Use of applications.* An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the investment company, except that a prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers variable annuity or variable life insurance contracts may contain a contract application although the prospectus includes, or is accompanied by, information about an investment company in which the unit investment trust invests that, pursuant to this section, is deemed a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)).

* * * * *

§ 230.485 [Amended]

4. Section 230.485 is amended by revising the reference "Items 5 or 6(a)(2) of Form N–1A" in paragraph (b)(1)(iv) to read "Item 6(b) or 11(a)(2) of Form N–1A".

5. Section 230.497 is amended by revising paragraphs (a) and (k).

The revisions read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement that varies from the form or forms of prospectus included in the registration statement filed pursuant to § 230.402(a) shall be filed as part of the registration statement not later than the date that form of prospectus is first sent or given to any person, except that an investment company advertisement under § 230.482 shall be filed under this paragraph (a) (but not as part of the registration statement) unless filed under paragraph (i) of this section.

* * * * *

(k) *Summary Prospectus filing requirements.* This paragraph (k), and not the other provisions of § 230.497, shall govern the filing of summary prospectuses under § 230.498. Each definitive form of a summary prospectus under § 230.498 shall be filed with the Commission no later than the fifth business day after the date that it is first used.

6. Revise § 230.498 to read as follows:

§ 230.498 Summary Prospectuses for open-end management investment companies.

(a) *Definitions.* For purposes of this section:

(1) *Class* means a class of shares issued by a Fund that has more than one class that represent interests in the same portfolio of securities under § 270.18f-3 of this chapter or under an order exempting the Fund from sections 18(f), 18(g), and 18(i) of the Investment Company Act (15 U.S.C. 80a–18(f), 80a–18(g), and 80a–18(i)).

(2) *Fund* means an open-end management investment company, or any Series of such a company, that has, or is included in, an effective registration statement on Form N–1A (§§ 239.15A and 274.11A of this chapter) and that has a current prospectus that satisfies the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)).

(3) *Series* means shares offered by a Fund that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with § 270.18f–2(a) of this chapter.

(4) *Statement of Additional Information* means the statement of additional information required by Part B of Form N–1A.

(5) *Statutory Prospectus* means a prospectus that satisfies the requirements of section 10(a) of the Act.

(6) *Summary Prospectus* means the summary prospectus described in paragraph (b) of this section.

(b) *General requirements for Summary Prospectus.* This paragraph describes the requirements for a Fund's Summary Prospectus. A Summary Prospectus that complies with this paragraph (b) will be deemed to be a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(1) *Cover page or beginning of Summary Prospectus.* Include on the cover page of the Summary Prospectus or at the beginning of the Summary Prospectus:

(i) The Fund's name and the Class or Classes, if any, to which the Summary Prospectus relates.

(ii) A statement identifying the document as a "Summary Prospectus."

(iii) The approximate date of the Summary Prospectus's first use.

(iv) The following legend:

Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks. You can find the Fund's prospectus and other information about the Fund online at [_____]. You can also get this information at no cost by calling [_____] or by sending an e-mail request to [_____].

(A) The legend must provide an Internet address, other than the address of the Commission's electronic filing system; toll free (or collect) telephone number; and e-mail address that investors can use to obtain the Statutory Prospectus and other information. The Internet Web site address must be specific enough to lead investors directly to the Statutory Prospectus and other materials that are required to be accessible under paragraph (f)(1) of this section, rather than to the home page or other section of the Web site on which the materials are posted. The Web site could be a central site with prominent links to each document. The legend may indicate, if applicable, that the Statutory Prospectus and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

(B) If a Fund incorporates any information by reference into the Summary Prospectus, the legend must

clearly identify the document from which the information is incorporated, including the date of the document; and, if information is incorporated from a source other than the Statutory Prospectus, the legend must explain that the incorporated information may be obtained, free of charge, in the same manner as the Statutory Prospectus. A Fund may modify the legend to include a statement to the effect that the Summary Prospectus is intended for use in connection with a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), a tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457), or a variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), as applicable, and is not intended for use by other investors.

(2) *Contents of the Summary Prospectus.* (i) Except as otherwise provided in this paragraph (b), provide the information required or permitted by Items 2 through 9 of Form N–1A, and only that information, in the order required by the form.

(ii) Provide in the table required by Item 4(b) of Form N–1A the Fund's average annual total returns and, if applicable, yield as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use. Update the return information as of the end of each succeeding calendar quarter not later than one month after the completion of the quarter. Include the date of the return information in the table. A Summary Prospectus may omit the explanation and information required by Instruction 2(c) to Item 4(b)(2) of Form N–1A.

(iii) Provide the portfolio holdings information required by Item 5 of Form N–1A as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use or the immediately prior calendar quarter if the most recent calendar quarter ended less than one month prior to the Summary Prospectus's first use. Update the portfolio holdings information as of the end of each succeeding calendar quarter not later than one month after the completion of the quarter.

Instruction to paragraphs (b)(2)(ii) and (iii). A Fund may reflect the updated performance and portfolio holdings information in the Summary Prospectus by affixing a label or sticker, or by other reasonable means.

(3) *Incorporation by reference.* (i) Except as provided by paragraph (b)(3)(ii) of this section, information may not be incorporated by reference into a Summary Prospectus. Information that is incorporated by reference into a Summary Prospectus in accordance with paragraph (b)(3)(ii) of this section need not be sent or given with the Summary Prospectus.

(ii) A Fund may incorporate by reference into a Summary Prospectus any or all of the information contained in the Fund's Statutory Prospectus and Statement of Additional Information, and any information from the most recent report to the Fund's shareholders under § 270.30e–1, provided that:

(A) The conditions of paragraphs (b)(1)(iv)(B) and (f) of this section are met;

(B) A Fund may not incorporate by reference into a Summary Prospectus information that paragraphs (b)(1) and (2) of this section require to be included in the Summary Prospectus; and

(C) Information that is permitted to be incorporated by reference into the Summary Prospectus may be incorporated by reference into the Summary Prospectus only by reference to the specific document that contains the information, not by reference to another document that incorporates such information by reference.

(iii) For purposes of § 230.159, information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with paragraph (b)(3)(ii) of this section.

(4) *Multiple Funds and Classes.* A Summary Prospectus may describe only one Fund, but may describe more than one Class of a Fund.

(c) *Transfer of the security.* Any obligation under section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) to have a Statutory Prospectus precede or accompany the carrying or delivery of a Fund security in an offering registered on Form N–1A is satisfied if:

(1) A Summary Prospectus is sent or given no later than the time of the carrying or delivery of the Fund security; and, if any other materials accompany the Summary Prospectus, the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials;

(2) The Summary Prospectus that is sent or given satisfies the requirements of paragraph (b) of this section at the time of the carrying or delivery of the Fund security; and

(3) The conditions set forth in paragraph (f) of this section are satisfied.

(d) *Sending communications.* A communication relating to an offering registered on Form N–1A sent or given after the effective date of a Fund's registration statement (other than a prospectus permitted or required under section 10 of the Act) shall not be deemed a prospectus under section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) if:

(1) It is proved that prior to or at the same time with such communication a Summary Prospectus was sent or given to the person to whom the communication was made; and, if any other materials accompany the Summary Prospectus, the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials;

(2) The Summary Prospectus that was sent or given satisfies the requirements of paragraph (b) of this section at the time of such communication; and

(3) The conditions set forth in paragraph (f) of this section are satisfied.

(e) *Updated Summary Prospectuses.* (1) For purposes of paragraphs (c) and (d) of this section, a Summary Prospectus that satisfies the requirements of paragraph (b) of this section at the time it is sent or given shall be deemed to continue to satisfy those requirements until the earlier of the date on which:

(i) The information in the Summary Prospectus is required to be updated for any purpose other than compliance with paragraphs (b)(2)(ii) and (iii) of this section; or

(ii) The Fund is required to file an amendment to its registration statement for the purpose of updating its Statutory Prospectus to satisfy the requirements of section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)).

(2) Unless otherwise required to be included in the Statutory Prospectus or registration statement, the failure to include in a Statutory Prospectus or registration statement the updated return and portfolio holdings information required to be included in a Summary Prospectus by paragraphs (b)(2)(ii) and (b)(2)(iii) of this section will not, solely by virtue of inclusion of the information in a Summary Prospectus, be considered an omission of material information required to be included in the Statutory Prospectus or registration statement.

(f) *Availability of Fund's Statutory Prospectus and certain other Fund documents.* (1) The Fund's current Summary Prospectus, Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders under § 270.30e–1 are publicly accessible, free of charge, at the Web site address specified on the cover page or at the beginning of the Summary

Prospectus on or before the time that the Summary Prospectus is sent or given and current versions of those documents remain on the Web site through the date that is at least 90 days after:

(i) In the case of reliance on paragraph (c) of this section, the date that the Fund security is carried or delivered; or

(ii) In the case of reliance on paragraph (d) of this section, the date that the communication is sent or given.

(2) The materials that are accessible in accordance with paragraph (f)(1) of this section must be presented on the Web site in a format, or formats, that:

(i) Are convenient for both reading online and printing on paper;

(ii) Permit persons accessing the Statutory Prospectus or Statement of Additional Information to move directly back and forth between the table of contents in such document (including from the table of contents required by § 230.481(c)) and each section of the document referenced in the table of contents; and

(iii) Permit persons accessing the Summary Prospectus to move directly back and forth between each section of the Summary Prospectus and:

(A) Any section of the Statutory Prospectus and Statement of Additional Information that provides additional detail concerning that section of the Summary Prospectus, or

(B) Tables of contents in the Statutory Prospectus and Statement of Additional Information that prominently display the sections within the Statutory Prospectus and Statement of Additional Information that provide additional detail concerning that section of the Summary Prospectus.

(3) Persons accessing the materials specified in paragraph (f)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet each of the requirements of paragraphs (f)(2)(i) and (ii) of this section.

(4) The conditions set forth in paragraphs (f)(1), (f)(2), and (f)(3) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (f)(1) of this section are not available for a time in the manner required by such paragraphs, provided that:

(i) The Fund has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (f)(1), (f)(2), and (f)(3) of this section; and

(ii) The Fund takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (f)(1), (f)(2), and (f)(3) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(g) If paragraph (c) or (d) of this section is relied on with respect to a Fund, the Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of the Fund's Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders to any person requesting such a copy within three business days after receiving a request for a paper copy. If paragraph (c) or (d) of this section is relied on with respect to a Fund, the Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor and by e-mail, an electronic copy of the Fund's Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders to any person requesting such a copy within three business days after receiving a request for an electronic copy. Compliance with this paragraph (g) is not a condition to the ability to rely on paragraph (c) or (d) of this section with respect to a Fund, and failure to comply with paragraph (g) does not negate the ability to rely on paragraph (c) or (d).

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

7. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201, *et seq.*; and 18 U.S.C. 1350.

* * * * *

§ 232.304 [Amended]

8. Section 232.304 is amended by revising the references "Item 22 of Form N–1A" in paragraphs (d) and (e) to read "Item 28 of Form N–1A".

§ 232.401 [Amended]

9. Section 232.401 is amended by:

a. Revising the reference "Item 8(a) of Form N–1A" in paragraph (b)(1)(iii) to read "Item 14(a) of Form N–1A"; and

b. Revising the reference "Items 2 and 3 of Form N–1A" in paragraph (b)(1)(iv) to read "Items 2, 3, and 4 of Form N–1A".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

10. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 78mm, 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.

* * * * *

11. Form N–14 (referenced in § 239.23) is amended by:

a. Revising paragraph (a) in Item 5;

b. Revising the reference "Items 10 through 22 of Form N–1A" in Item 12(a) to read "Items 15 through 28 of Form N–1A"; and

c. Revising the reference "Items 10 through 13 and 15 through 22 of Form N–1A" in Item 13(a) to read "Items 15 through 18 and 20 through 28 of Form N–1A".

The revision to paragraph (a) of Item 5 reads as follows:

Note: The text of Form N–14 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N–14

* * * * *

Item 5. Information About the Registrant

* * * * *

(a) If the registrant is an open-end management investment company, furnish the information required by Items 2 through 9, 10(a), 10(b), and 11 through 14 of Form N–1A under the 1940 Act;

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. 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.

* * * * *

13. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising the Table of Contents;

b. Revising the General Instructions as follows:

i. Revising the phrase "(except Items 1, 2, 3, and 8), B, and C (except Items 23(e) and (i)-(k))" in paragraph B.2.(b) to read "(except Items 1, 2 , 3, 4, and 14), B, and C (except Items 29(e) and (i)-(k))";

ii. Revising paragraphs B.4.(c), C.3.(a), C.3.(b), and C.3.(c);

iii. Revising the reference "Items 6(b)–(d) and 7(a)(2)–(5)" in paragraph

C.3.(d)(i) to read "Items 12(b)–(d) and 13(a)(2)–(5)"; and

iv. Revising the reference "Items 2(c)(2)(iii)(B) and (C) and 2(c)(2)(iv)" in paragraph C.3.(d)(iii) to read "Items 4(b)(2)(iii)(B) and (C) and 4(b)(2)(iv)";

c. Revising Item 1 as follows:

i. Removing Instruction 6 to Item 1(b)(1);

ii. In Item 1(b)(3), revising the telephone number "1–202–942–8090" to read "1–202–551–8090"; and

iii. In Item 1(b)(3), revising the zip code "20549–0102" to read "20549–0213";

d. Redesignating Items 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 as Items 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, respectively;

e. Adding new Item 2;

f. Revising Item 3 as follows:

i. Adding a sentence after the sentence following the heading "Fees and expenses of the Fund";

ii. Revising the heading "Annual Fund Operating Expenses (expenses that are deducted from Fund assets)";

iii. Adding a new paragraph after the "Example" with the heading "Portfolio Turnover";

iv. Revising Instruction 1(b);

v. In Instruction 2(a)(i), revising the reference "Item 7(a)" to read "Item 13(a)";

vi. Revising Instruction 3(e);

vii. In Instruction 3(f)(iii), revising the references "Item 8(a)" to read "Item 14(a)";

viii. In Instruction 3(f)(vii), revising the reference "Item 8" to read "Item 14";

ix. Revising Instruction 4(a);

x. Redesignating Instruction 5 as Instruction 6 and adding new Instruction 5; and

xi. In newly redesignated Instruction 6, revising paragraph (b);

g. Revising newly redesignated Item 4 as follows:

i. Removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b);

ii. In newly redesignated Item 4(a), revising the reference "Item 4(b)" to read "Item 10(b)";

iii. In newly redesignated Item 4(b)(1)(i), revising the reference "Item 4(c)" to read "Item 10(c)";

iv. In the Instruction to newly redesignated Item 4(b)(1)(iii), revising the reference "Items 2(c)(1)(ii) and (iii)" to read "Items 4(b)(1)(ii) and (iii)";

v. In newly redesignated Item 4(b)(2)(i), revising the reference "paragraphs (c)(2)(ii) and (iii)" to read "paragraphs (b)(2)(ii) and (iii)";

vi. In newly redesignated Item 4(b)(2)(iii), revising the reference "Item 22(b)(7)" to read "Item 28(b)(7)";

vii. In newly redesignated Item 4(b)(2)(iv), revising the reference "paragraph 2(c)(2)(iii)" to read "paragraph 4(b)(2)(iii)";

viii. In Instruction 1(a) to newly redesignated Item 4(b)(2), revising the reference "Item 8(a)" to read "Item 14(a)";

ix. In Instruction 1(b) to newly redesignated Item 4(b)(2), revising the reference "paragraph (c)(2)(i)" to read "paragraph (b)(2)(i)";

x. In Instruction 2(a) to newly redesignated Item 4(b)(2), revising the references "Item 21(a)", "Item 21(b)(1)", and "Items 21(b)(2) and (3)" to read "Item 27(a)", "Item 27(b)(1)", and "Items 27(b)(2) and (3)", respectively;

xi. In Instruction 2(b) to newly redesignated Item 4(b)(2), revising the reference "Item 22(b)(7)" to read "Item 28(b)(7)";

xii. In Instruction 2(d) to newly redesignated Item 4(b)(2), revising the references "Item 21(b)(2)" and "Item 21" to read "Item 27(b)(2)" and "Item 27", respectively;

xiii. In newly redesignated Item 4(b)(2), revising Instructions 2(e), 3(a), 3(b), and 3(c); and

xiv. In Instruction 4 to newly redesignated Item 4(b)(2), revising the reference "Item 22(b)(7)" to read "Item 28(b)(7)";

h. Adding new Items 5, 6, 7, 8, and 9;

i. In Instruction 5 to newly redesignated Item 10(b)(1), revising the reference "Item 11(c)(1)" to read "Item 17(c)(1)";

j. Revising newly redesignated Item 11 as follows:

i. Revising paragraph (a)(1)(i);

ii. Revising paragraph (a)(2); and

iii. Removing the Instructions to newly redesignated Item 11(a)(2);

k. In newly redesignated Item 12, removing paragraph (g);

l. Revising newly redesignated Item 13 as follows:

i. In Instruction 1 to newly redesignated Item 13(a)(2), revising the reference "Item 7" to read "Item 13";

ii. In Instruction 2 to newly redesignated Item 13(a)(2), revising the references "Item 7" and "Items 12(d) and 17(b)" to read "Item 13" and "Items 18(d) and 23(b)", respectively;

iii. In newly redesignated Item 13(a)(5), revising the reference "Item 17(a)" to read "Item 23(a)"; and

iv. In the Instruction to newly redesignated Item 13(a)(5), revising the reference "Item 7" to read "Item 13";

m. Revising newly redesignated Item 17 as follows:

i. In newly redesignated Item 17(d), revising the reference "Item 4(b)" to read "Item 10(b)";

ii. In newly redesignated Item 17(e), revising the reference "Item 8" to read "Item 14"; and

iii. In Instruction 1 to newly redesignated Item 17(f)(2), revising the reference "Item 11(f)(2)" to read "Item 17(f)(2)";

n. In newly redesignated Item 18, revising the reference "Item 12" to read "Item 18";

o. In newly redesignated Items 21(a), 21(b), and 21(c), revising the reference "Item 5(a)(2)" to read "Item 6(b)";

p. Revising newly redesignated Item 24 as follows:

i. Removing the Instruction to newly redesignated Item 24(a);

ii. In Instruction 4 to newly redesignated Item 24(c), revising the reference "Item 22" to read "Item 28"; and

iii. In Instruction 1 to newly redesignated Item 24(e), revising the reference "Item 17(e)" to read "Item 23(e)";

q. In Instruction 1 to newly redesignated Item 26(c), revising the references "Item 7(b)(2)", "Item 14(d)", and "Item 30" to read "Item 13(b)(2)", "Item 20(d)", and "Item 36", respectively;

r. Revising newly redesignated Item 28 as follows:

i. In newly redesignated Item 28(a), revising the reference "Item 17(c)" to read "Item 23(c)";

ii. In newly redesignated Item 28(b)(2), revising the reference "Item 8(a)" to read "Item 14(a)";

iii. In newly redesignated Item 28(b)(5), revising the reference "Item 12(a)(1)" to read "Item 18(a)(1)";

iv. In newly redesignated Item 28(b)(7)(ii)(B), revising the reference "Item 21(b)(1)" to read "Item 27(b)(1)";

v. In Instruction 10 to newly redesignated Item 28(b)(7), revising the reference "Instruction 5 to Item 3" to read "Instruction 6 to Item 3";

vi. In the Instruction to newly redesignated Item 28(c)(1), revising the references "Item 22(b)(1)" and "Item 22(c)(1)" to read "Item 28(b)(1)" and "Item 28(c)(1)", respectively;

vii. In newly redesignated Item 28(c)(2), revising the reference "Item 8(a)" to read "Item 14(a)";

viii. In Instruction 1(c) to newly redesignated Item 28(d)(1), revising the reference "Item 8(a)" to read "Item 14(a)";

ix. In Instruction 2(a)(ii) to newly redesignated Item 28(d)(1), revising the reference "Item 22(d)(1)" to read "Item 28(d)(1)"; and

x. In the Instruction to newly redesignated Item 28(d)(4), revising the

reference "Item 12(f)" to read "Item 18(f)";

s. In newly redesignated Item 29(k), revising the reference "Item 22" to read "Item 28";

t. Revising newly redesignated Item 33 as follows:

i. In newly redesignated Item 33(b), revising the reference "Item 20" to read "Item 26";

ii. In Instruction 2 to newly redesignated Item 33(c), revising the reference "Item 20(c)" to read "Item 26(c)"; and

u. In Instruction 1 to newly redesignated Item 35, revising the reference "Item 14" to read "Item 20".

The additions and revisions are to read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Contents of Form N–1A

General Instructions

* * * * *

B. Filing and Use of Form N–1A

* * * * *

4. * * *

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–1A. The information required by Items 2 through 9 must be provided in plain English under rule 421(d) under the Securities Act.

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. * * *

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Notwithstanding rule 421(a) under the Securities Act regarding the order of information required in a prospectus, disclose the information required by Items 2 through 9 in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act. Information that is included in response to Items 2 through 9 need not be repeated elsewhere in the prospectus. Disclose the information required by Item 13 (Distribution Arrangements) in one place in the prospectus.

(b) *Other Information.* A Fund may include, except in response to Items 2 through 9, information in the prospectus or the SAI that is not otherwise required. For example, a Fund may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Items 2 through 9 may not include disclosure other than that required or permitted by those Items.

(c) *Use of Form N–1A by More Than One Registrant, Series or Class.* Form N–1A may be used by one or more Registrants, Series, or Classes.

(i) When disclosure is provided for more than one Fund or Class, the disclosure should be presented in a format designed to communicate the information effectively. Except as required by paragraph (c)(ii) for Items 2 through 9, Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or Classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Funds or Classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 through 9 in numerical order at the front of the prospectus and not to precede Items 2 through 9 with other information. A prospectus that contains information about more than one Fund must present all of the information required by Items 2 through 9 for each Fund sequentially and may not integrate the information for more than one Fund together. That is, a prospectus must present all of the information for a particular Fund that is required by Items 2 through 9 together, followed by all of the information for each additional Fund, and may not, for example, present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Funds followed by all of the Item 3 (Risk/Return Summary: Fee Table) information for several Funds. If a prospectus contains information about multiple Funds, clearly identify the name of the relevant Fund at the beginning of the information for the Fund that is required by Items 2 through 9. A Multiple Class Fund may present the information required by Items 2 through 9 separately for each Class or may integrate the information for multiple Classes, although the order of the information must be as prescribed in Items 2 through 9. For example, the prospectus may present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Classes followed by all of the Item 3 (Risk/Return Summary: Fee Table) information for the Classes, or may present Items 2 and 3 for each of several Classes sequentially. Other presentations of multiple Class information also would be acceptable if they are consistent with the Form's

intent to disclose the information required by Items 2 through 9 in a standard order at the beginning of the prospectus. For a Multiple Class Fund, clearly identify the relevant Classes at the beginning of the Items 2 through 9 information for those Classes.

* * * * *

Part A: Information Required in a Prospectus

* * * * *

Item 2. Risk/Return Summary: Investment Objectives/Goals

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (*e.g.*, that it is a Money Market Fund or a balanced fund).

Item 3. Risk/Return Summary: Fee Table

* * * * *

Fees and expenses of the Fund

* * * You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $[_____] in [name of fund family] funds.

* * * * *

Annual Fund Operating Expenses (ongoing expenses that you pay each year as a percentage of the value of your investment)

* * * * *

Example

* * * * *

Portfolio Turnover

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover may indicate higher transaction costs. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was __% of the average value of its whole portfolio.

Instructions

1. *General.*

(a) * * *

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. The narrative explanation regarding sales charge discounts is only required by a Fund that offers such discounts and should specify the minimum level of investment required to qualify for a discount.

* * * * *

3. *Annual Fund Operating Expenses.*

(a) * * *

(e) If there were expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses and will continue to reduce them for no less than one year from the effective date of the Fund's registration statement, a Fund may add two captions to the table: one caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The Fund should place these additional captions directly below the "Total Annual Fund Operating Expenses" caption of the table and should use appropriate descriptive captions, such as "Fee Waiver [and/or Expense Reimbursement]" and "Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement]," respectively. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, and briefly describe who can terminate the arrangement and under what circumstances.

* * * * *

4. *Example.*

(a) Assume that the percentage amounts listed under "Total Annual Fund Operating Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect any expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses during the most recently completed calendar year and that will continue to reduce them for no less than one year from the effective date of the Fund's registration statement. An adjustment to reflect any expense reimbursement or fee waiver arrangement may be reflected only in the period(s) for which the expense reimbursement or fee waiver arrangement is expected to continue.

* * * * *

5. *Portfolio Turnover.* Disclose the portfolio turnover rate provided in response to Item 14(a) for the most recent fiscal year (or for such shorter period as the Fund has been in operation). Disclose the period for which the information is provided if less than a full fiscal year. A Fund that is a Money Market Fund may omit the portfolio turnover information required by this Item.

6. *New Funds.* * * *

(a) * * *

(b) If there are expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement, a New Fund may add two captions to the table: one caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the New Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The New Fund should place these additional captions directly below the "Total Annual Fund Operating Expenses" caption of the table and should use appropriate descriptive captions, such as "Fee Waiver [and/or Expense Reimbursement]" and "Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement]," respectively. If the New Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, and briefly describe who can terminate the arrangement and under what circumstances.

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(2) *Risk/Return Bar Chart and Table.*

* * * * *

Instructions

* * * * *

2. *Table.*

* * * * *

(e) Returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) for a Fund or Series must be adjacent to one another and appear in that order. The returns for a broad-based securities market index, as required by paragraph 4(b)(2)(iii), must precede or follow all of the returns for a Fund or Series rather than be interspersed with the returns of the Fund or Series.

3. *Multiple Class Funds.*

(a) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2), provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (*e.g.*, the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the

Classes all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offers a new Class in a prospectus and separately presents information for the new Class in response to Item 4(b)(2), include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not presented that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2):

(i) Provide the returns required by paragraph 4(b)(2)(iii)(A) of this Item for each of the Classes;

(ii) Provide the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for only one of those Classes. The Fund may select the Class for which it provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item, provided that the Fund:

* * * * *

Item 5. Portfolio Holdings

Provide a list of the ten largest issues contained in the Fund's portfolio, in descending order, together with the percentage of net assets represented by each. Include the date as of which the holdings are provided adjacent to the holdings information.

Instructions.

1. Provide the required information as of the end of the most recent calendar quarter.

2. For purposes of the list, aggregate and treat as a single issue, respectively, (a) all fully collateralized repurchase agreements; and (b) all securities of any one issuer (other than fully collateralized repurchase agreements). The U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities is a separate issuer.

3. Any securities that would be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue may be listed in one amount as "Miscellaneous securities," provided the securities so listed are eligible to be categorized as "Miscellaneous securities" in accordance with *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12–12] as of the end of the most recent calendar quarter. However, if any security that is included in "Miscellaneous securities" would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue, the remaining securities of that group must nonetheless be listed as required, even if the remaining securities alone would not otherwise be required to be listed in this manner (*e.g.*, because the combined value of the security listed in "Miscellaneous securities" and the remaining securities of the same issuer is sufficient to cause them to be among the 10 largest issues, but the value of the remaining securities alone is not sufficient to cause such remaining securities to be among the 10 largest issues). If any securities are listed as "Miscellaneous securities," briefly explain in a footnote what that term represents.

Item 6. Management

(a) *Investment Adviser(s).* Provide the name of each investment adviser of the Fund, including sub-advisers.

Instructions:

1. A Fund need not identify a sub-adviser whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a Money Market Fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

2. A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph, a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the fund's net assets.

(b) *Portfolio Manager(s).* State the name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio ("Portfolio Manager").

Instructions:

1. This requirement does not apply to a Money Market Fund.

2. If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

Item 7. Purchase and Sale of Fund Shares

(a) *Purchase of Fund Shares.* Disclose the Fund's minimum initial or subsequent investment requirements.

(b) *Sale of Fund Shares.* Also disclose that the Fund's shares are redeemable and briefly identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer).

Item 8. Tax Information

State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains or that the Fund intends to distribute tax-exempt income. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to federal income tax.

Item 9. Financial Intermediary Compensation

Include the following statement. A Fund may modify the statement if the modified statement contains comparable information.

Payments to Broker-Dealers and Other Financial Intermediaries.

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may influence the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.

* * * * *

Item 11. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser of the Fund, including sub-advisers. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

* * * * *

(2) *Portfolio Manager.* For each Portfolio Manager identified in response to Item 6(b), state the Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund. If a Portfolio Manager is a member of a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund that is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio.

* * * * *

14. Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by revising the reference "Item 22(b)(ii) of Form N–1A" to read "Item 28(b)(ii) of Form N–1A" and by revising the reference "Item 22(b)(ii) equation" to read "Item 28(b)(ii) equation" in Instruction 3 to Item 21(b)(ii).

Note: The text of Form N–4 does not, and these amendments will not, appear in the Code of Federal Regulations.

By the Commission.

Dated: November 21, 2007.

Nancy M. Morris,

Secretary.

Appendix

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

BILLING CODE 8011–01–P

Hypothetical Summary Prospectus – Prepared By SEC Staff – For Illustrative Purposes Only

THE XYZ BALANCED FUND

SUMMARY PROSPECTUS

(Class A and Class B Shares)

November 1, 2007

Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks. You can find the Fund's prospectus and other information about the Fund, including the statement of additional information and most recent reports to shareholders, online at [Web address]. You can also get this information at no cost by calling 1-800-000-0000 or by sending an e-mail request to [e-mail address]. The Fund's prospectus and statement of additional information, both dated April 27, 2007, and most recent report to shareholders, dated June 30, 2007, are all incorporated by reference into this Summary Prospectus.

Investment Objective: Income and capital growth consistent with reasonable risks.

Fees and Expenses of the Fund: The tables below describe the fees and expenses that you may pay if you buy and hold shares of the Fund. You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $25,000 in XYZ Funds.

Shareholder Fees (fees paid directly from your investment)

	Class A	Class B
Maximum Sales Charge (Load) Imposed on Purchases (as percentage of offering price)	5.75%	None
Maximum Deferred Sales Charge (Load) (as percentage of the lower of original purchase price or sale proceeds)	None	5.00%

Annual Fund Operating Expenses
(ongoing expenses that you pay each year as a percentage of the value of your investment)

	Class A	Class B
Management Fees	0.66%	0.66%
Distribution (12b-1) Fees	0.00%	0.75%
Service (12b-1) Fees	0.23%	0.23%
Other Expenses	0.28%	0.46%
Total Annual Fund Operating Expenses	1.17%	2.10%

Example

The Example below is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds. The Example assumes that you invest $10,000 in the Fund for the time periods indicated. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same. Although your actual costs may be higher or lower, based on these assumptions your costs would be:

	1 year	3 years	5 years	10 years
Class A (whether or not shares are redeemed)	$687	$925	$1,182	$1,914
Class B (if shares are redeemed)	$713	$958	$1,329	$1,974
Class B (if shares are not redeemed)	$213	$658	$1,129	$1,974

Hypothetical Summary Prospectus – Prepared By SEC Staff – For Illustrative Purposes Only

Portfolio Turnover

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover may indicate higher transaction costs. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was 63% of the average value of its whole portfolio.

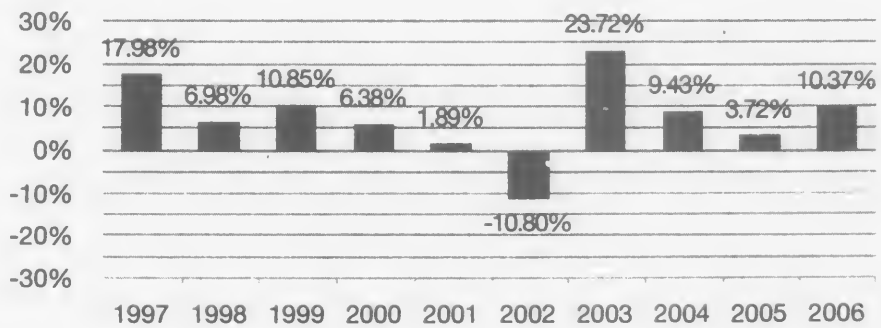
Principal Investment Strategies: The Fund invests mainly in common stocks, bonds, and notes of U.S. and foreign companies. . . . . .

Principal Risks:

- You could lose money by investing in the Fund.
- Risk Number Two – . . . . . .
- Risk Number Three – . . . . . .
- Risk Number Four – . . . . . .
- Risk Number Five – . . . . . .

Annual Total Return: The following bar chart and table provide some indication of the risks of investing in the Fund. The bar chart shows changes in the Fund's performance from year to year for Class A shares. The table shows how the Fund's average annual returns for 1, 5, and 10 years compared with those of a broad measure of market performance. The Fund's past performance (before and after taxes) is not necessarily an indication of how the Fund will perform in the future.

Sales charges are not reflected in the bar chart, and if those charges were included, returns would be less than those shown.



Best Quarter (ended 6/30/03): 12.08%. Worst Quarter (ended 9/30/01): -11.06%. The year-to-date return as of the most recent calendar quarter, which ended September 30, 2007, was 7.03%.

Hypothetical Summary Prospectus – Prepared By SEC Staff – For Illustrative Purposes Only

Average Annual Total Returns for Periods Ended December 31, 2006

	1 Year	5 Years	10 Years
Class A (Return Before Taxes)	4.04%	5.72%	7.26%
Class A (Return After Taxes on Distributions)	2.48	4.52	5.05
Class A (Return After Taxes on Distributions and Sale of Fund Shares)	2.30	4.34	4.90
Class B (Return Before Taxes)	4.38	5.62	7.12
S&P 500 Index (reflects no deduction for fees, expenses or taxes)	15.79%	6.19%	8.42%

The after-tax returns are shown only for Class A shares and are calculated using the historical highest individual federal marginal income tax rates and do not reflect the impact of state and local taxes. Actual after-tax returns depend on an investor's tax situation and may differ from those shown. After-tax returns are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts.

Top Ten Portfolio Holdings (percent of total net assets) as of September 30, 2007

Rank	Security	Rank	Security
1	XYZ, Inc. (3.0%)	6	The DEF Co. (1.3%)
2	The ABC Co. (2.3%)	7	The NOP Corp. (1.3%)
3	XYZ Growth, Inc. (1.7%)	8	HIJ Co. (1.1%)
4	The TUV Corp. (1.6%)	9	ABC Corp. (1.0%)
5	QRS Co. (1.4%)	10	OPQ, Inc. (0.9%)

Investment Adviser: XYZ Management Company, LLC

Portfolio Manager: John E. Smith, CFA, Vice President and Equity Portfolio Manager of XYZ Management Company, LLC. Mr. Smith has managed the Fund since 2005.

Purchase and Sale of Fund Shares: You may purchase or redeem shares of the Fund on any business day online or through our Web site at [Web address], by mail (XYZ Funds, Box 1000, Anytown, USA 10000), or by telephone at 800-000-0000. Shares may be purchased by electronic bank transfer, by check, or by wire. You may receive redemption proceeds by electronic bank transfer or by check. You generally buy and redeem shares at the Fund's next-determined net asset value (NAV) after XYZ receives your request in good order. NAVs are determined only on days when the NYSE is open for regular trading. The minimum initial purchase is $2,500. The minimum subsequent investment is $100 (or $50 under an automatic investment plan).

Dividends, Capital Gains, and Taxes: The Fund's distributions are taxable, and will be taxed as ordinary income or capital gains, unless you are investing through a tax-deferred arrangement, such as a 401(k) plan or an individual retirement account.

Payments to Broker-Dealers and Other Financial Intermediaries: If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may influence the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.

[FR Doc. 07–5852 Filed 11–29–07; 8:45 am]
BILLING CODE 8011–01–C

Federal Register

Friday,
November 30, 2007

Part III

The President

Executive Order 13452—Establishing an Emergency Board To Investigate Disputes Between the National Railroad Passenger Corporation and Certain of Its Employees Represented by Certain Labor Organizations

Federal Register
Vol. 72, No. 230
Friday, November 30, 2007

Presidential Documents

Title 3—

The President

Executive Order 13452 of November 28, 2007

Establishing an Emergency Board To Investigate Disputes Between the National Railroad Passenger Corporation and Certain of Its Employees Represented by Certain Labor Organizations

Disputes exist between National Railroad Passenger Corporation (Amtrak) and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (RLA).

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the RLA (45 U.S.C. 160), it is hereby ordered as follows:

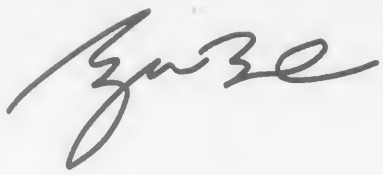
Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern standard time on December 1, 2007, a Board of five members to be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the RLA, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
November 28, 2007.

Billing code 3195–01–P

LABOR ORGANIZATIONS

Brotherhood of Maintenance of Way Employes

International Brotherhood of Electrical Workers

International Association of Machinists and Aerospace Workers

Brotherhood of Railroad Signalmen

Joint Council of Carmen, comprised of the Transportation Communications International Union/Brotherhood Railway Carmen Division and the Transport Workers Union of America

American Train Dispatchers Association

National Conference of Firemen & Oilers/Service Employees International Union

Transportation Communications International Union—American Railway and Airline Supervisors Association

[FR Doc. 07–5919
Filed 11–29–07; 8:57 am]
Billing code 3195–01–P

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Brucellosis in cattle—

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Nursery stock; technical amendment; published 11-30-07

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National School Lunch, School Breakfast, and Special Milk programs; procurement requirements; published 10-31-07

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Legal authority citations updates; published 11-30-07

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Insurance and hazard mitigation:

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Federal credit union bylaws; published 10-31-07

NUCLEAR REGULATORY COMMISSION

Byproduct material; expanded definition requirements; published 10-1-07

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Federal Aviation Administration

Airworthiness directives:

Bell Helicopter Textron, Inc.; published 10-26-07

Cessna; published 11-15-07

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Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Kahului Bay and Kahului Harbor, Maui, HI; published 11-28-07

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Allocation of assets—

Interest assumptions for valuing and paying benefits; published 11-15-07

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Agricultural Marketing Service

Dairy Product Mandatory Reporting Program; establishment; comments due by 12-3-07; published 11-2-07 [FR E7-21559]

Egg, poultry, and rabbit products; inspection and grading:

Fees and charges increase; comments due by 12-6-07; published 11-6-07 [FR 07-05571]

Leafy greens; handling regulations; comments due by 12-3-07; published 10-4-07 [FR E7-19629]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Agricultural Bioterrorism Protection Act of 2002; implementation:

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Agricultural Research Service

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ISTO Technologies, Inc.; comments due by 12-6-07; published 11-6-07 [FR 07-05505]

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Ethanol production, differentiating grain inputs and standardized testing of ethanol production co-products; USDA role; comments due by 12-4-07; published 10-5-07 [FR E7-19733]

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Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish and shrimp; comments due by 12-7-07; published 10-23-07 [FR 07-05245]

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Private land mobile services—

800 MHz band; improving public safety

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HEALTH AND HUMAN SERVICES DEPARTMENT

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  - Dietary noncariogenic carbohydrate sweeteners and dental caries; health claims; comments due by 12-3-07; published 9-17-07 [FR E7-18196]

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- Nonimmigrant aliens infected with HIV; visa and authorization for temporary admission into U.S.; comments due by 12-6-07; published 11-6-07 [FR E7-21841]

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- Louisiana; comments due by 12-3-07; published 10-2-07 [FR E7-19422]

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- Manbirtee Key, Manatee, FL; comments due by 12-6-07; published 11-6-07 [FR E7-21761]
- St. Petersburg Captain of Port Zone, FL; comments due by 12-6-07; published 11-6-07 [FR E7-21760]

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- Intercountry adoptions by U.S. citizens; citizenship classification of alien children under Hague Convention; comments due by 12-3-07; published 10-4-07 [FR E7-18992]

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- Facility license standards; comments due by 12-3-07; published 10-18-07 [FR E7-20541]

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- Federal employees detailed and transferred to international organizations; comments due by 12-3-07; published 10-2-07 [FR E7-19447]

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- Noise exposure maps—
  - Cincinnati/Northern Kentucky International Airport, KY; comments due by 12-8-07; published 10-17-07 [FR 07-05102]

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- Honeywell; comments due by 12-4-07; published 10-5-07 [FR E7-19684]
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- Payments to beneficiaries who are eligible for more than one benefit; comments due by 12-3-07; published 10-2-07 [FR E7-19280]

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.*

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H.R. 2602/P.L. 110–118

To name the Department of Veterans Affairs medical facility in Iron Mountain, Michigan, as the "Oscar G. Johnson Department of Veterans Affairs Medical Facility". (Nov. 16, 2007; 121 Stat. 1346)

S.J. Res. 7/P.L. 110–119

Providing for the reappointment of Roger W. Sant as a citizen regent of the Board of Regents of the Smithsonian Institution. (Nov. 16, 2007; 121 Stat. 1347)

S. 2206/P.L. 110–120

To provide technical corrections to Public Law 109-116 (2 U.S.C. 2131a note) to extend the time period for the Joint Committee on the Library to enter into an agreement to obtain a statue of Rosa Parks, and for other purposes. (Nov. 19, 2007; 121 Stat. 1348)

Last List November 19, 2007

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110th Congress

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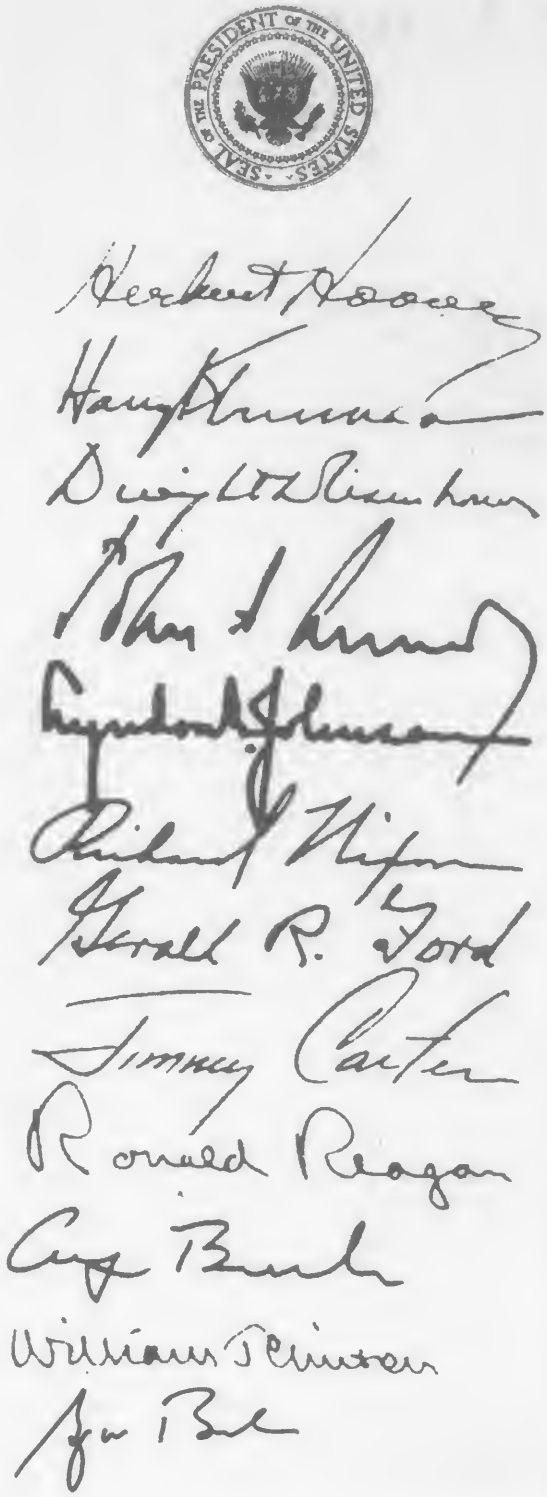

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