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9:00 a.m.–Noon

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[ICE 2377–06; DHS Docket No. ICEB–2006–0004]

RIN 1653–AA50

Safe-Harbor Procedures for Employers Who Receive a No-Match Letter

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: U.S. Immigration and Customs Enforcement is amending the regulations relating to the unlawful hiring or continued employment of unauthorized aliens. The amended regulation describes the legal obligations of an employer, under current immigration law, when the employer receives a no-match letter from the Social Security Administration or receives a letter regarding employment verification forms from the Department of Homeland Security. It also describes "safe-harbor" procedures that the employer can follow in response to such a letter and thereby be certain that the Department of Homeland Security will not use the letter as any part of an allegation that the employer had constructive knowledge that the employee referred to in the letter was an alien not authorized to work in the United States. The final rule adds two more examples to the current regulation's definition of "knowing" to illustrate situations that may lead to a finding that an employer had such constructive knowledge. These additional examples involve an employer's failure to take reasonable steps in response to either of two events: The employer receives a written notice from the Social Security Administration (such as an "Employer Correction Request" commonly known as an employer "no match letter") that the combination of name and Social Security account number submitted to the Social Security Administration for an employee does not match agency records; or the employer receives written notice from the Department of Homeland Security that the immigration status or employment-authorization documentation presented or referenced by the employee in completing Form I–9 was not assigned to the employee according to Department of Homeland Security records. (Form I–9 is retained by the employer and made available to DHS investigators on request, such as during an audit.) The rule also states that DHS will continue to review the totality of relevant circumstances in determining if an employer had constructive knowledge that an employee was an unauthorized alien in a situation described in any of the regulation's examples. The "safe-harbor" procedures include attempting to resolve the no-match and, if it cannot be resolved within a certain period of time, verifying again the employee's identity and employment authorization through a specified process.

DATES: This rule is effective September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Ron Shelkey, Office of Investigations, Worksite Enforcement Unit, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 425 I Street, NW., Room 1000; division 3, Washington, DC 20536. Telephone: (202) 514–2844 (not a toll-free number).

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Part 274a—Control of Employment of Aliens

I. Background

A. History of the Rulemaking

The Department of Homeland Security (DHS) published a proposed rule in the **Federal Register** on June 14, 2006, that would amend the regulations relating to the unlawful hiring or continued employment of unauthorized aliens. 71 FR 34,281 (proposed Jun. 14, 2006). A sixty-day public comment period ended on August 14, 2006.

A number of commenters, in comments and separate communications, requested that DHS extend the comment period beyond the normal sixty-day period established in the proposed rule. After careful consideration of the requests, DHS believes that the sixty-day comment period was reasonable and sufficient for the public to review the proposed rule and provide any comments. Accordingly, DHS has declined to extend the comment period.

DHS received approximately 5,000 comments in response to the proposed rule from a variety of sources, including labor unions, not-for-profit advocacy organizations, industry trade groups, private attorneys, businesses, and other interested organizations and individuals. The comments varied considerably; some commenters strongly supported the rule as proposed, while others were critical of the proposed rule and suggested changes.

A number of comments had no bearing on the proposed rule or criticized the rule for not addressing other immigration-law issues. Comments seeking changes in United States statutory laws, changes in

regulations or forms unrelated to or not addressed by the proposed rule, changes in procedures of agencies other than DHS, or resolution of other issues were not within the scope of the rulemaking or the authority of DHS, and are not addressed in this final rule.

The comments frequently repeated specific issues (including specific text). Approximately 4,800 comments in several mass mailings were received. Several organizations also submitted identical or nearly identical comments.

At the request of a broad-based coalition of national business and trade associations, DHS met with representatives of the organization and its constituent organizations on June 20, 2006. A summary of that meeting including a list of attendees has been placed on the docket for this rulemaking.

Each comment received was reviewed and considered in the preparation of this final rule. This final rule addresses the comments by issue rather than by referring to specific commenters or comments. All of the comments received electronically or on paper may be reviewed at the United States Government's electronic docket system, www.regulations.gov, under docket number ICEB–2006–0004.

B. The Issue Presented

Employers annually send the Social Security Administration (SSA) millions of earnings reports (W–2 Forms) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a letter, such as an "Employer Correction Request", that informs the employer of the mismatch. The letter is commonly referred to as an employer "no-match letter." There can be many causes for a no-match, including clerical error and name changes. One potential cause may be the submission of information for an alien who is not authorized to work in the United States and who may be using a false SSN or a SSN assigned to someone else. Such a letter may be one indicator to an employer that one of its employees may be an unauthorized alien.

U.S. Immigration and Customs Enforcement (ICE) sends a similar letter (currently called a "Notice of Suspect Documents") after it has inspected an employer's Employment Eligibility Verification forms (Forms I–9) during an investigation audit and after unsuccessfully attempting to confirm, in agency records, that an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I–9 was assigned to that person. (After a Form I–9 is completed by an employer and employee, it is retained by the employer and made available to DHS investigators on request, such as during an audit.)

This regulation describes an employer's current obligations under immigration laws, and its options for avoiding liability, after receiving such a letter from either SSA or DHS. The regulation specifies step by step actions that can be taken by the employer that will be considered by DHS to be a reasonable response to receiving a no-match letter—a response that will eliminate the possibility that the no-match letter can be used as any part of an allegation that an employer had constructive knowledge that it was employing an alien not authorized to work in the United States, in violation of section 274A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(a)(2) . This provision of the INA states:

> It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States *knowing* the alien is (or has become) an unauthorized alien with respect to such employment. [Emphasis added.]

Both regulation and case law support the view that an employer can be in violation of section 274A(a)(2), 8 U.S.C. 1324a(a)(2) by having constructive rather than actual knowledge that an employee is unauthorized to work. A definition of "knowing" first appeared in the regulations on June 25, 1990 at 8 CFR 274a.1(l)(1). *See* 55 FR 25,928. That definition stated:

> The term "knowing" includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.

As noted in the preamble to the original regulation, that definition, which is essentially the same as the definition adopted in this rule, is consistent with the Ninth Circuit's holding in *Mester Mfg. Co.* v. *INS*, 879 F.2d 561, 567 (9th Cir. 1989) (holding that when an employer who received information that some employees were suspected of having presented a false document to show work authorization, such employer had constructive knowledge of their unauthorized status when the employer failed to make any inquiries or take appropriate corrective action). The court cited its previous opinion explaining "deliberate failure to investigate suspicious circumstances imputes knowledge." *Id.* at 567 (citing *United States* v. *Jewell*, 532 F.2d 697 (9th Cir. 1976) (*en banc*)). *See also New El Rey Sausage Co.* v. *INS*, 925 F.2d 1153, 1158 (9th Cir. 1991).

The preceding regulatory language also begins the current regulatory definition of "knowing," which is still at 8 CFR 274a.1(l)(1). In the current definition, additional language follows this passage, describing situations that may involve constructive knowledge by the employer that an employee is not authorized to work in the United States. This language was added on August 23, 1991. *See* 56 FR 41,767. The current definition contains an additional, concluding paragraph, which specifically precludes use of foreign appearance or accent to infer that an employee may be unlawful, and to the documents that may be requested by an employer as part of the verification system that must be used at the time of hiring, as required by INA section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). This paragraph will be described in greater detail below. The verification system referenced in this paragraph is described in INA section 274A(b), 8 U.S.C. 1324a(b).

C. Final Rule

The final rule amends the definition of "knowing" in 8 CFR 274a.1(l)(1), in the portion relating to "constructive knowledge." First, it adds two more examples to the existing examples of information available to an employer indicating that an employee could be an alien not authorized to work in the United States. It also explicitly states the employer's obligations under current law after receiving a no-match letter or the other information identified in 8 CFR 274a.1. If the employer fails to take reasonable steps after receiving such information, and if the employee is in fact not authorized to work in the United States, the employer may be found to have had constructive knowledge of that fact. The final rule also states explicitly another implication of the employer's obligation under current law—whether an employer would be found to have constructive knowledge in particular cases of the kind described in each of the examples (the ones in the current regulation and in the new regulation) depends on the "totality of relevant circumstances" present in the particular case. This standard applies in all cases.

The additional examples are:

(1) Written notice to an employer from SSA, e.g. an "Employer Correction Request," that the combination of name and SSN submitted for an employee does not match SSA records; and

(2) Written notice from DHS that the immigration status document, or employment authorization document, presented or referenced by the employee in completing Form I–9 was assigned to another person, or that there is no agency record that the document was assigned to anyone.

The regulation also describes more specifically the steps that an employer might take after receiving a no-match letter, steps that DHS considers reasonable. By taking these steps in a timely fashion, an employer would avoid the risk that the no-match letter would be used as any part of an allegation that the employer had constructive knowledge that the employee was not authorized to work in the United States. The steps that a reasonable employer may take include the following:

(I) A reasonable employer checks its records promptly after receiving a no-match letter to determine whether the discrepancy results from a typographical, transcription, or similar clerical error in the employer's records, or in its communication to the SSA or DHS. If there is such an error, the employer corrects its records, informs the relevant agencies; verifies that the name and number, as corrected, match agency records—in other words, verifies with the relevant agency that the information in the employer's files matches the agency's records; and makes a record of the manner, date, and time of the verification. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within thirty days of receipt of the no-match letter.

(II) If such actions do not resolve the discrepancy, a reasonable employer would promptly request that the employee confirm that the employer's records are correct. If they are not correct, the employer would take the actions needed to correct them, inform the relevant agencies (in accordance with the letter's instructions, if any), and verify the corrected records with the relevant agency. If the records are correct according to the employee, the reasonable employer would ask the employee to pursue the matter personally with the relevant agency, such as by visiting a local SSA office, bringing original documents or certified copies required by SSA, which might include documents that prove age, identity, citizenship or alien status, and other relevant documents, such as proof of a name change, or by mailing these documents or certified copies to the SSA office, if permitted by SSA. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within thirty days of receipt of the no-match letter. The regulation provides that a discrepancy will be considered resolved only if the employer verifies with SSA or DHS, as the case may be, that the employee's name matches in SSA's records the number assigned to that name, or, with respect to DHS letters, verifies the authorization with DHS that DHS records indicate that the immigration status document or employment authorization document was assigned to the employee. In the case of a number from SSA, the valid number may be the number that was the subject of the no-match letter or a different number, for example a new number resulting from the employee's contacting SSA to resolve the discrepancy. Employers may verify a SSN with SSA by telephoning toll-free 1–800–772–6270, weekdays from 7 a.m. to 7 p.m. EST. *See http://www.ssa.gov/employer/ssnvadditional.htm.* For information on SSA's online verification procedure, *see http://www.ssa.gov/employer/ssnv.htm.* Employers should make a record of the manner, date, and time of any such verification, as SSA may not provide any documentation.

(III) The regulation also describes a verification procedure that the employer may follow if the discrepancy is not resolved within ninety days of receipt of the no-match letter. This procedure would verify (or fail to verify) the employee's identity and work authorization. If the described procedure is completed, and the employee is verified, then even if the employee is in fact not authorized to work in the United States, the employer will not be considered to have constructive knowledge of that fact based on receipt of the no-match letter. This final rule, however, will not provide a safe harbor for employers that for some other reason have actual or constructive knowledge that they are employing an alien not authorized to work in the United States.

If the discrepancy referred to in the no-match letter is not resolved, and if the employee's identity and work authorization cannot be verified using a reasonable verification procedure, such as that described in this regulation, then the employer must choose between:

(1) Taking action to terminate the employee, or

(2) Facing the risk that DHS may find that the employer had constructive knowledge that the employee was an unauthorized alien and therefore, by continuing to employ the alien, violated INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2).

The procedure to verify the employee's identity and work authorization described in the rule involves the employer's and employee's completing a new Form I–9, Employment Eligibility Verification Form, using the same procedures *as if* the employee were newly hired, as described in 8 CFR 274a.2, with certain restrictions. The regulation identifies these restrictions:

(*1*) Under the regulation, both Section 1 ("Employee Information and Verification") and Section 2 ("Employer Review and Verification") would need to be completed within ninety-three days of receipt of the no-match letter. Therefore, if an employer and employee tried to resolve the discrepancy described in the no-match letter for the full ninety days provided for in the regulation, they have an additional three days to complete a new Form I–9. Under current regulations, three days are provided for the completion of the form after a new hire. 8 CFR 274a.2(b)(1)(ii).

(*2*) No document containing the SSN or alien number that is the subject of the no-match letter, and no receipt for an application for a replacement of such a document, may be used to establish employment authorization or identity or both.

(*3*) No document without a photograph may be used to establish identity (or both identity and employment authorization). (This is consistent with the documentary requirements of the United States Citizenship and Immigration Services' Electronic Employment Verification System (EEVS) (formerly called the "Basic Pilot Program"). *See http://uscis.gov/graphics/services/SAVE.htm.*)

Employers should apply these procedures uniformly to all of their employees having unresolved no-match indicators. If they do not do so, they may violate applicable anti-discrimination laws. The regulation also amends the last paragraph of the current definition of "knowing." The existing regulations provide, in relevant part, that—

> Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274[A](b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

The final rule clarifies that this language applies to employers that receive no-match letters, but that employers who follow the safe harbor procedures set forth in this rule uniformly and without regard to perceived national origin or citizenship status as required by the provisions of

274B(a)(6) of the INA will not be found to have engaged in unlawful discrimination. This clarification is accomplished by adding the following language after "individual":

Except a document about which the employer has received written notice described in paragraph (l)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraphs (l)(2)(i)(C) or (l)(2)(ii)(B) of this section.

Alternative documents that show work authorization are specified in 8 CFR 274a.2(b)(1)(v). Examples are a United States passport (unexpired or expired), a United States birth certificate, or any of several documents issued to lawful permanent resident aliens or to nonimmigrants with work authorization.

There may be other procedures a particular employer could follow in response to a no-match letter, procedures that would be considered reasonable by DHS and inconsistent with a finding that the employer had constructive knowledge that the employee was an unauthorized alien. But such a finding would depend on the totality of relevant circumstances. An employer that followed a procedure other than the "safe-harbor" procedures described in the regulation would face the risk that DHS may not agree.

It is important that employers understand that the proposed regulation describes the meaning of constructive knowledge and specifies "safe-harbor" procedures that employers could follow to avoid the risk of being found to have constructive knowledge that an employee is not authorized to work in the United States based on receipt of a no-match letter. The regulation would not preclude DHS from finding that an employer had *actual* knowledge that an employee was an unauthorized alien. An employer with actual knowledge that one of its employees is an unauthorized alien could not avoid liability by following the procedures described in the proposed regulation. The burden of proving actual knowledge would, however, be on the government. Further, DHS may find that the employer had constructive notice from other sources. Finally, it is important that employers understand that the resolution of discrepancies referenced in a no-match letter, or other information that an employee's SSN presented to an employer matches the records for the employee held by the SSA, does not, in and of itself, demonstrate that the employee is authorized to work in the United States. For example, an alien not authorized to work in the United States may present a fraudulent name and matching fraudulent SSN, and this rule does not address such fraud.

II. Comments and Responses

A. Authority to Promulgate the Rule

Several commenters suggested that DHS does not have the authority to adopt the proposed rule. Different commenters suggested that DHS was intruding on the authority of the SSA, the Department of Justice (DOJ), or the Internal Revenue Service (IRS). These comments seem to indicate a lack of understanding of the nature of the rule, DHS's role in employer sanctions, and the relationship of authority among the agencies. DOJ, the IRS, and SSA all were involved in the promulgation of the proposed rule.

DHS has the authority to investigate and pursue sanctions against employers who knowingly employ or continue to employ unauthorized aliens or who do not properly verify employees' employment eligibility. Section 274A of the INA, 8 U.S.C. 1324a, requires all United States employers, agricultural associations, agricultural employers, farm labor contractors, or persons or other entities who recruit or refer persons for employment for a fee, to verify the employment eligibility and identity of all employees hired to work in the United States. To comply with the law, an employer, or a recruiter or referrer for a fee, must complete an Employment Eligibility Verification form (Form I–9) for all employees, including United States citizens. 8 CFR 274a.2. Forms I–9 are not routinely filed with any government agency. Employers are responsible for maintaining these records, which ICE may request from them. *See* 71 FR 34,510 (June 15, 2006).

DHS may conduct investigations for violations of section 274A of the INA either on its own initiative or in response to third-party complaints that have a reasonable probability of validity. If DHS determines after investigation that an employer has violated section 274A of the INA by knowingly employing unauthorized aliens, DHS may issue and serve a Warning Notice or may commence administrative proceedings against the employer by issuing and serving a Notice of Intent to Fine (Form I–763). *See* 8 CFR 274a.9(a)–(d). An employer who wishes to contest the fine may request a hearing before a DOJ administrative law judge. *See* 8 CFR 274a.9(e); 28 CFR part 68.

DHS's authority to investigate and pursue sanctions against employers who knowingly employ or continue to employ unauthorized aliens necessarily includes the authority to decide not to pursue sanctions against employers who follow the DHS-recommended procedure. In essence, this final rule limits DHS's discretion to use an employer's receipt of a particular written notice from SSA or DHS as evidence of constructive knowledge for those employers who follow the DHS procedure. *See, e.g., Lopez* v. *Davis,* 531 U.S. 230, 240–41 (2001) (upholding categorical limitation of discretion through rulemaking). The rule does not affect the authority of the SSA to issue no-match letters, the authority of the IRS to impose and collect taxes, or the authority of DOJ to enforce the anti-discrimination provisions of the INA or adjudicate notices of intent to fine employers.

DOJ also has an enforcement role in the context of employer sanctions. In addition to adjudicating Notices of Intent to Fine, DOJ—through its Office of Special Counsel for Immigration-Related Unfair Employment Practices—is responsible for enforcing the anti-discrimination provisions of section 274B of the INA, 8 U.S.C. 1324b. *See* 28 CFR part 44. While charges of unfair immigration-related employment practices may be filed by any DHS officer, they are primarily brought by individuals who believe that they are victims of discriminatory practices. *See* 28 CFR 44.300. Although individuals generally bring charges on their own behalf, DOJ and DHS may nevertheless file such charges.

SSA, by contrast, does not have an immigration enforcement role. Instead, SSA collects employee earnings reports from employers through IRS Wage and Tax Statements (Forms W–2) in order to properly administer Social Security benefits. *See* 26 CFR 31.6051–2(a). SSA receives over 250 million earnings reports from employers each year. The vast majority of these reports are successfully matched with individual earnings records, which are then used to calculate future Social Security benefits, such as retirement, disability, and survivors' benefits. Every year, however, the SSA is unable to post some wage reports to individual earnings records because some employees' reported combinations of names and SSNs do not match SSA records. As mentioned earlier, there are many causes for such a no-match, including clerical error and name change. One cause is the submission of information for an alien who is not authorized to work in the United States and is using a false SSN or an SSN assigned to someone else. For example, in 2002 the SSA was unable to match almost 9 million wage reports, representing $56 billion in earnings. At

the end of tax year 2003, the Earnings Suspense File (ESF) contained approximately 255 million wage reports, representing $519.6 billion in earnings. The ESF is an electronic holding file for wage items reported on Forms W–2 that cannot be matched to the earnings records of individual workers. These wage reports have accumulated since the beginning of the program and date back as far as 1936. One method SSA relies on to resolve these mismatches is issuing employers an "Employer Correction Request"—more commonly known as an SSA employer "no-match letter."

One commenter suggested that DHS lacks authority to promulgate regulations related to Form I–9 verification and acceptable documents, claiming that this authority is vested in the Attorney General and the DOJ. This comment misinterprets the division of authority under the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002). The HSA abolished the Immigration and Naturalization Service (INS) and transferred its functions to DHS, including those functions relating to employer sanctions. *See* HSA sections 441, 471, 6 U.S.C. 251, 291; INA section 103(a)(1), 8 U.S.C. 1103(a)(1). The HSA required a division of regulatory authority between DOJ and the newly created DHS, commensurate with the transfer of functions of the former INS from DOJ to DHS. That transfer included the functions of the employment verification system and the regulations for the administration of that system. *See* 68 FR 10,353 (March 5, 2003).

Some commenters mistakenly believed that this rule results in changes to the employment verification system that would require congressional notification. *See* INA section 274A(d), 8 U.S.C. 1324a(d). This rule merely clarifies current standards related to constructive knowledge. It does not change the verification system, so the notification requirements are inapplicable. Nor does this rule affect the EEV Program, so any limitations that apply to changes in the EEV Program do not apply to this rule.

Other commenters suggested that DHS lacks authority to regulate SSA notices. This final rule only addresses how DHS will treat an employer's knowledge of the name and SSN discrepancy from a written notice from the SSA, such as an "Employer Correction Request" or no-match notice, in investigating the unlawful hiring or continued employment of unauthorized aliens. SSA and DHS, as coordinating agencies within the Executive Branch, are each taking steps to improve the no-match process and the public's understanding of that no-match process in the immigration context.

Finally, one commenter suggested that this rule grants DHS access to tax information covered by section 6103 of the Internal Revenue Code of 1986, 26 U.S.C. 6103. Under section 6103, the IRS, and any other official or employee who acquires the information from the IRS in the course of official duties, may not provide tax returns or tax information to outside agencies or others except under certain circumstances. The same information, however, in the hands of an individual employer is not subject to any restrictions by section 6103. Tax information in the hands of the originator of that information (the employer) is frequently and unquestionably subject to demand in criminal, civil, and regulatory matters by federal, state, and local law enforcement officials. This rule does not provide DHS with access to any tax information governed by section 6103 of the Internal Revenue Code. This rule affects only DHS consideration of SSA no-match letters sent by the SSA to an employer and in the hands of the employer during an investigation of the employer's records, and that letter in the hands of the recipient does not qualify as tax information covered by section 6103.

B. Changes in Legislation

Many commenters argued that a regulatory change is unwise in light of the congressional debate over comprehensive immigration reform. As the President has indicated, the Administration supports comprehensive immigration reform that will secure the border, strengthen enforcement of immigration laws in the nation's interior, and create a temporary worker program, address the millions of undocumented immigrants in the country without providing amnesty, and promote the assimilation of newcomers. DHS believes that worksite enforcement is a critical component of comprehensive immigration reform, and supports mandating an employment eligihility verification system in a manner that is not overly burdensome for American employers. Accordingly, DHS supports legislative provisions that strengthen document verification and related requirements, and that provide a safe harbor for those employers who in good faith comply with the law.

Although DHS is working with Congress to enact such legislation, DHS cannot predict when Congress will pass such legislation. The further development of regulations under existing law is quite common and regulatory action continues when Congress is considering legislative proposals. In the interim, however, this rule will provide employers with the information they need to respond to receipt of the no-match letters.

Others argue that the regulation should wait because it may prove to be inconsistent with, or superfluous to, future legislation, and that this might cause confusion on the part of employers. DHS believes that there is an immediate benefit to providing this rule change. If future legislation requires an adjustment, the regulation can be amended.

C. Constructive Knowledge

A number of commenters suggested that the proposed rule impermissibly expands the concept of constructive knowledge. DHS disagrees.

The current regulations provide that "The term knowing includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition." 8 CFR 274a.1(l)(1). This rule will revise the structure of the definition to separate references to actual knowledge from constructive knowledge, but it will retain the same definition of constructive knowledge: "[c]onstructive knowledge is knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition."

This is consistent with the common definition that "constructive knowledge" is "[k]nowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person." Black's Law Dictionary (8th ed. 2004). The use of the term and its meaning is common, although the application to specific facts is subject to interpretation. *See, e.g., Metro-Goldwyn-Mayer Studios Inc.* v. *Grokster, Ltd.*, 545 U.S. 913 (2005) (company's liability for product that facilitates copyright infringement); *Harris Trust and Sav. Bank* v. *Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000) (transferee's liability under ERISA for prohibited transaction); *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998) (employer's vicarious liability for sexual harassment in workplace). DHS is including an illustrative definition in the regulations to more clearly distinguish "constructive notice" from actual notice without changing the meaning of either term.

Courts have long held that constructive knowledge is applicable in situations involving employment of unauthorized aliens. In *Mester Manufacturing* v. *INS*, 879 F.2d 561, 566 (9th Cir. 1989), the INS notified an employer that immigration status documents presented by certain employees for completion of Forms I–9 were fake, yet the employer took no action. Analogizing to the criminal law, the Ninth Circuit held that the INS demonstrated Mester had knowledge because Mester "failed to take appropriate corrective action" after "receiv[ing] specific information that several of his employees were likely to be unauthorized." *Id.* at 566–67. The Ninth Circuit invoked constructive knowledge again in *New El Rey Sausage Co.* v. *INS*, 925 F.2d 1153, 1158 (9th Cir. 1991), in which it pointed out that "employers, far from being allowed to employ anyone except those whom the government had shown to be unauthorized, have an affirmative duty to determine that their employees are authorized."

A number of commenters have argued that the present rule impermissibly expands the reach of constructive knowledge, citing *Collins Food Int'l* v. *INS*, 948 F.2d 549 (9th Cir. 1991). In *Collins Food*, the Ninth Circuit held that a finding of constructive knowledge could not be based on (1) The employer's extending an offer of employment prior to conducting a Form I–9 verification, and (2) the employer's accepting a Social Security card as evidence of employment authorization when the back of the card did not match the Social Security card pictured in the INS Handbook for Employers. *Id.* at 552, 554. In doing so, the court applied the doctrines set out in *Mester* and *New El Rey Sausage* but cautioned against an expansive application of constructive knowledge:

> [The Immigration Reform and Control Act of 1986], as we have pointed out, is delicately balanced to serve the goal of preventing unauthorized alien employment while avoiding discrimination against citizens and authorized aliens. The doctrine of constructive knowledge has great potential to upset that balance, and it should not be expansively applied.

948 F.2d 554–55.

Some commenters have argued that *Collins Food* limits findings of constructive knowledge to situations in which employers have been explicitly warned by DHS that an employee may be an unauthorized alien. Thus, they suggest, DHS is impermissibly expanding constructive knowledge by including receipt of written notice from SSA as an example of a situation that may lead to a finding of constructive knowledge.

This is an incorrect reading of *Collins Food*. Indeed, *Collins Food* distinguished *Mester* and *New El Rey Sausage* precisely because "Collins Food did not have the kind of positive information that the INS had provided in *Mester* and *New El Rey Sausage*." 948 F.2d at 555. Nothing in *Collins Food*—or any other case cited by the commenters—suggests that such "positive information" indicating certain employees may be unauthorized aliens must come from DHS and not from SSA.

Additionally, these comments do not distinguish between an affirmative obligation to resolve the issues raised by the no-match letters and the "safe harbor" from use of the no-match letter as part of a determination of constructive knowledge. This final rule does not require an employer to take any particular action; the rule simply provides a clear method for employers to exercise reasonable care in addressing "no-match" letters.

Nor does this rule require that employers avail themselves of the safe-harbor procedure. As many commenters point out, receipt of written notice from DHS resulting from a Form I–9 audit creates a duty to investigate, whereas receipt of an SSA no-match letter may create such a duty depending on the totality of the circumstances. DHS acknowledges that an SSA no-match letter by itself does not impart knowledge that the identified employees are unauthorized aliens.

DHS is aware that SSA no-matches may occur due to a name change or typographical error. In some situations a listed SSN is facially suspect, such as when the first three numbers of an employee's claimed SSN are "000," or are in "800" or "900" series, which are not used. DHS believes that the initial submission of Form I–9 with facially incorrect information is problematic, and that this type of information cannot be created by an innocent transcription or typographic error. A letter from DHS or SSA stating that such a number has been checked and does not match agency records reinforces the suspect nature of the original information. In other situations, an SSA no-match letter sent to the employer may be the first indication of a suspect number, and when combined with other evidence known to the employer, "would lead a person, through the exercise of reasonable care, to know" that the employee is not authorized to work. 8 CFR 274a.1(l)(1).

A number of commenters have suggested that SSA no-match letters issued in the past claim to make no statement about an individual's immigration status, and employers are confused about their obligations under the civil rights laws. To the extent employers were confused, this rule should provide clear guidance.

One commenter requested that DHS clarify whether employers who follow the procedures herein will be protected from all claims of constructive knowledge, or just claims of constructive knowledge based on the letters for which the employers followed the safe-harbor procedure. DHS has amended the language in the final rule at paragraphs (l)(2)(i) and (l)(2)(ii) to clarify that (1) An employer who follows the safe-harbor procedure will be considered to have taken reasonable steps in response to the notice, and (2) the employer's receipt of the written notice will therefore not be used as evidence of constructive knowledge. If, in the totality of the circumstances, other independent evidence exists to prove that an employer has constructive knowledge, the employer may still face liability. This could be unusual, however, in the situation where an employer carefully follows the safe-harbor procedures provided in this regulation and has no information suggesting that the employee is using another person's identity. Also, as noted in the proposed rule, this safe-harbor procedure does not protect an employer who has actual, as opposed to constructive, knowledge that an employee is an unauthorized alien.

D. Fourteen-Day and Sixty-Day Time Frames

Several commenters suggested that the fourteen calendar-day time frame in the proposed rule was insufficient for employers to review their records to determine if a typographical or other error caused the no-match, correct their records and verify the corrected information to attempt to resolve a discrepancy in an SSA letter or a question raised in a DHS letter. The commenters proposed a range of alternatives, from fifteen business days to one hundred and twenty days. After careful consideration, DHS is extending the initial fourteen-day time frame to thirty calendar days. 8 CFR 101(h). DHS believes that this provides sufficient time for employers to take certain reasonable steps to resolve the problem.

Many commenters also suggested that the sixty-day time frame in the proposed rule for an employee to resolve the no-match with DHS and SSA was insufficient. Most argued for an extension by claiming that SSA would be unable to resolve discrepancies

between names and SSNs and that DHS would be unable to resolve questions about immigration status within this time frame. DHS has consulted with SSA throughout this rulemaking and on this particular issue. SSA has informed DHS that, if employer and employee act in a timely manner, a 90-day timeframe will be sufficient for all but the most difficult cases. DHS has extended the time to ninety calendar days.

This rule does not create a new requirement that an employer resolve a discrepancy within ninety days. Instead, the rule creates a safe harbor from use of the no-match letter as part of an allegation of constructive knowledge if the employer takes certain steps to resolve the discrepancy. In situations not covered by this rule, constructive knowledge will continue to be based on a number of factors, including whether the employer made a good-faith but ultimately unsuccessful attempt to comply with the safe-harbor procedure.

Some commenters requested that the time frame be tolled in certain circumstances—for example, fourteen days from the date the "appropriate human resource staff" at the employer reads the letter. DHS declines to adopt such a proposal because it would add too much inconsistency and unpredictability. In addition, since the time period has been extended to thirty days, the concern about misdirected mail is somewhat mitigated. Moreover, the employer can control the receipt of the no-match letter in the same manner as it controls all related correspondence through the address that it submits on its filings.

Others have asked that DHS create special rules for special circumstances, such as seasonal workers, teachers on sabbatical, and employees who are out of the office for an extended period due to excused absence or disability. DHS recognizes that there may be situations where employers may not be able to avail themselves of the safe-harbor procedure as described herein. This rule provides an option, not a requirement. DHS is attempting to provide a safe-harbor procedure with as much general application as possible for employers. In these types of special circumstances, an employer should make a good faith effort to resolve the situations as rapidly as practicable, and keep a file documenting such efforts.

Some have complained that the proposed rule did not clarify what steps employers must complete within the fourteen-day time frame. To provide more clarity, DHS has amended the text of this final rule to provide that employers must check and resolve any discrepancies within their own records within thirty calendar days of receiving notice from SSA, or contact the local DHS office within thirty days of receiving notice from DHS. If an employer receives, for example, an SSA "Employer Correction Request" notice and determines that the discrepancy referenced is not due to the employer's records, the employer must promptly ask employees to check their own records, confirm the information in the employer's records, and follow up with SSA as appropriate. Although this action need not occur within thirty days, employers must nevertheless act within a reasonable time frame in order to satisfy this promptness requirement. It is also important for employers to notify employees promptly if further action is required so they have a reasonable amount of time to contact the appropriate agency, and so that the agency can correct its records within the ninety-day time frame.

The steps and time frames are illustrated, as in the proposed and final rules, in the following table:

COMPARISON OF TIMING OF ACTIONS UNDER PROPOSED AND FINAL RULES

Action	Proposed rule	Final rule
Employer receives letter from SSA or DHS indicating mismatch of employee, name and Social Security number.	Day 0	Day 0.
Employer checks own records, makes any necessary corrections of errors, and verifies corrections with SSA or DHS.	0–14 days	0–30 days.
If necessary, employer notifies employee and asks employee to assist in correction	0–60 days	0–90 days.
If necessary, employer corrects own records and verifies correction with SSA or DHS	0–60 days	0–90 days.
If necessary, employer performs special I–9 procedure	60–63 days	90–93 days.

Some commenters have asked about the employee's status and the employer's liability while an employer is following the safe-harbor procedure. An employer is prohibited from knowingly employing unauthorized aliens, so an employer may not continue to employ an individual if the employer obtains actual knowledge during the safe-harbor procedure that the individual is an unauthorized alien. If the employer does not obtain actual knowledge during the safe-harbor process, and instead merely has information that could lead to a finding of constructive knowledge from the no-match letter, the employer may continue to employ the individual until all of the steps in the safe-harbor procedure are completed. This, of course, only speaks to an employee's immigration status and the employer's liability under the immigration laws, and does not speak to what actions an employer could or should take under its own internal personnel policies—for example, termination of employment based on an employee's failure to show up for work or an employee's false statements to the employer.

E. Practical Application

1. Letters Sent to Employers

Several commenters questioned how the rule would apply when a no-match letter is sent to the employee, rather than the employer. DHS agrees that greater detail is warranted and has amended paragraphs (l)(iii)(B) and (C) of the final rule to clarify that the rule applies to "[w]ritten notice *to the employer* from the [SSA or DHS]." (Emphasis added.) The rule now explicitly states that the examples of constructive knowledge and the safe-harbor procedure apply only to written notice that is issued directly to the employer. Some commenters have requested that the time frame be tolled until the letter is received by a particular person designated by the employer. As stated previously, no rule of this nature can fit every circumstance and DHS declines to make such a series of changes. Moreover, the employer controls the flow of mail within its business and can determine the office within its organization that becomes the recipient of all mail from DHS and SSA.

Others have asked whether this safe-harbor procedure applies to information employers receive from SSA through sources other than no-match letters. DHS is not extending the safe-harbor procedures that far. For example, the rule does not extend to instances where SSA provides optional SSN verification methods that are described at *http://*

www.ssa.gov/employer/ssnv.htm. If an employer uses one of these verification tools and learns that an employee's combination of name and SSN do not match SSA records, this safe-harbor procedure technically does not apply. Nor does this rule extend to information received through participation in the USCIS' EEV Program or ICE Mutual Agreement between Government and Employers (IMAGE) program. In an effort to clarify this, DHS has amended (l)(1)(iii)(B) to specifically reference, as an example, earnings on Form W–2. However, DHS fully considers all of an employer's attempts to verify employment authorization status and to employ only authorized workers in determining whether to pursue sanctions. All of these good-faith efforts militate against such sanctions. The rule provides a distinct safe-harbor provision if an employer follows the specified procedures in those instances where the employer has been contacted by SSA or DHS.

The final rule addresses only the limited situation in which the employer receives a no-match letter from SSA or DHS. DHS, however, may exercise its prosecutorial discretion favorably for employers who take other affirmative steps to ensure that they do not employ aliens who are not authorized to work in the United States, such as the affirmative use of:

- SSA's Social Security Number Verification System (SSNVS) (see *http://www.ssa.gov/employer/ssnv.htm*),
- USCIS' Systematic Alien Verification for Entitlements (SAVE) Program and EEV (see *https://www.vis-dhs.com/EmployerRegistration*), or
- ICE's IMAGE program (*http://www.ice.gov/partners/opaimage/index.htm*).

Employers should always document their efforts to ensure that they do not employ aliens who are not authorized to work in the United States. SSA and EEV do not routinely provide documentary evidence of internet or other verification attempts, but employers can print screens to record their actions and both SSA and DHS computer systems record all transactions. The employer's best interest lies in recording its own efforts so that such documentation can be provided in any later inspections.

2. Labor Certification or an Application for Prospective Employer

Other commenters suggested clarifying the "Labor Certification or an Application for Prospective Employer" example in paragraph (l)(1)(iii)(A) of the proposed rule. The proposed rule adopted this language directly from the existing 8 CFR 274a.1(l)(1)(ii), which is in turn based on *United States* v. *American McNair, Inc.*, 1 OCAHO 1846 (No. 285; Jan. 8, 1991). In *American McNair*, an administrative law judge upheld the INS's finding of constructive knowledge because the employer knew a particular employee was "ineligible for amnesty" and the employer filed a labor certificate and employment-based visa petition in order "to get [the employee] legalized." *Id.* at 1846, 1854–55. As some commenters pointed out, however, the language in the proposed rule could be confusing and it does not refer to any particular named documents or forms. Accordingly, DHS has adopted one commenter's suggested revision. The rule now includes language providing that "[a]n employee's request that the employer file a labor certification or employment-based visa petition on behalf of the employee" as an example of a situation that may, depending on the totality of relevant circumstances, require an employer to take reasonable steps in order to avoid a finding by DHS that the employer has constructive knowledge that the employee is an unauthorized alien. DHS recognizes, though, that not all situations involving such a request will be evidence of constructive knowledge—for example, employers may have work-authorized employees who are seeking permanent residency.

3. Written Notice From SSA

Some commenters also suggested clarifying an employer's duties under the proposed safe-harbor provision at (l)(2)(i)(A)(2), stating that the rule should not indicate that employers are responsible for advising employees how to resolve the discrepancy with SSA or determining what documentation employees may need to resolve the discrepancy. DHS agrees that the employer's obligation under the safe-harbor procedure does not extend this far. DHS has therefore amended the text of the final rule to state that employers need only advise the employee of the time within which the discrepancy must be resolved and share with the employee any guidance the SSA notice may provide on how the discrepancy might be resolved.

4. Written Notice From DHS

A number of commenters pointed out that paragraph (l)(2)(ii) of the proposed rule, which sets forth a procedure to follow after receiving written notice from DHS, only speaks of an employer's responsibilities to address the questions about employment authorization raised in the DHS notice, and does not mention what role an employee has in resolving these questions. These DHS letters, which are generally issued by ICE on behalf of DHS, usually contain guidance on steps the employer should take to avoid sanctions from DHS and provide a point of contact within DHS if the employer has questions or believes the letter has been issued in error. The particular steps that an employer or employee would take to resolve any error or discrepancy may depend on the facts and circumstances of each case. Thus, DHS agrees that employees may have a role in resolving discrepancies if the letter is issued in error, but declines to amend the DHS safe-harbor procedure.

5. Clarity and Reasonable Steps

A number of commenters expressed concern that the proposed rule does not provide enough clarity because it includes too many optional steps and references to vague notions of reasonableness. For example, paragraph (l)(2)(A)(1) of the proposed rule lists an employer's obligations under the SSA safe-harbor procedure, but begins by stating that an employer must "take[ ] reasonable steps, within 14 days, to attempt to resolve the discrepancy; such steps may include * * *." Since the purpose of the rule is to provide employers with clarity, DHS has amended the safe-harbor procedure to provide clearer steps for employers to take and particular time frames in which the employers should complete the steps. DHS has removed the references to "reasonable steps" in the safe-harbor procedure because this procedure is itself a combination of reasonable steps. As noted in the proposed rule, there may be other reasonable steps. This regulation, however, identifies the combination of reasonable steps that DHS has approved for resolution of notices from SSA and DHS, and it is the only combination of steps that will guarantee that DHS will not use the employer's receipt of the notices from SSA and DHS as evidence of the employer's constructive knowledge that its employee is an unauthorized alien.

6. Verification and Recordkeeping

Some commenters have expressed concern over the recordkeeping requirements under the safe-harbor procedure. For example, paragraphs (l)(2)(i)(A)(1) and (l)(2)(i)(A)(2) of the proposed rule required employers to make records, but the proposed rule did not specify the manner of recordkeeping for verified resolutions of SSA discrepancies. Also, the recordkeeping requirements for the Form I–9 verification under (l)(2)(iii) suggested to some that employers would need to

retain the new Form I–9 for a different period of time than the employers would need to retain the old Form I–9. DHS has amended the rule in response.

The safe-harbor procedure requires employers, in some circumstances, to "verify with the Social Security Administration that the employee's name and social security account number, as corrected, match Social Security Administration records." Employers may do so in any manner they choose. For example, *http://www.ssa.gov/employer/ssnv.htm* describes how employers may verify this information over the internet, and *http://www.ssa.gov/employer/ssnvadditional.htm* describes other methods, such as an SSA 1–800 number.

The final rule provides for employers to store records of verified resolutions along with the employee's Form I–9. This may be accomplished by updating the employee's Form I–9 or completing a new Form I–9 to the extent that verified resolutions demonstrate inaccuracies in the employee's initial Form I–9. As noted elsewhere, Form I–9 completion and retention options have recently been expanded. 71 FR 34,510 (June 15, 2006).

Similarly, the final rule clarifies the safe harbor's retention requirements for the Form I–9 verification under (l)(2)(iii) so that the new Form I–9 will be retained for the same period as the original Form I–9. The date of hire for purposes of section 274A(b)(3) of the INA, 8 U.S.C. 1324a(b)(3), and 8 CFR 274a.2(b)(2)(i) is still the same date, even though the safe-harbor procedure under (l)(2)(iii) requires that the employer complete a new Form I–9 "using the same *procedures* as if the employee were newly hired." (Emphasis added). For example, an employer completes a Form I–9 when an employee is hired in September 1998, and then completes a new Form I–9 verification under (l)(2)(iii) in July 2007 after learning that the employee is the subject of an unresolved SSA no-match letter. The employee then accepts another position on February 1, 2008, at which point the employment contract terminates. In this example, the employer would need to retain both Forms I–9 until February 1, 2009.

Employers are encouraged to document telephone conversations, in addition to retaining all SSA correspondence, computer-generated printouts, e-mails and SSNVS screen prints evidencing that the discrepancy has been corrected. Lastly, employers should confirm and document that the discrepancy referenced in the no match letter has been resolved via SSNVS or the SSA 1–800 number.

7. Mechanics of Form I–9 Verification

Some commenters requested that DHS clarify how an employer can complete a new Form I–9 verification when an employee insists that the disputed SSN and name are correct. If an employee insists that the disputed SSN number and name are correct, the employee should contact SSA and correct SSA's records. The rule contemplates that employees will be able to correct the SSA's records within ninety days of the employer's receipt of the notice. If the employee insists that the SSN is correct but takes no action during those ninety days to resolve the SSA notice, employers wishing to receive the benefits of the safe harbor must proceed with the special Form I–9 verification procedure, which provides the employer with assurance that the employee is not an unauthorized alien. During this Form I–9 verification, the employer may not rely on documents containing the disputed SSN, but can and should rely on other documents listed in 8 CFR 274a.2(b)(1)(v) that do not contain a SSN but that can nevertheless demonstrate identity and employment authorization—for example, a United States passport, DHS Permanent Resident Card, or other specified DHS immigration documents. Employers who continue to employ an employee without resolving the discrepancy and without successfully completing the Form I–9 verification in (l)(2)(iii) will not qualify for the safe-harbor provision.

Other commenters asked what DHS expects employers to do when they follow the procedure in (l)(2)(i) but an employee with an unmatched SSN fails to resolve the discrepancy with SSA. Under the safe harbor procedures of this rule, employers should complete the special I–9 verification at this point. The safe-harbor procedure, however, is merely one way for employers to avoid liability under the INA for knowingly hiring or continuing to employ unauthorized aliens. Employers are free to develop other reasonable methods for resolution of SSA notices, although they face the risk that DHS may not agree that their methods are reasonable. To gain the benefits of this safe-harbor procedure, however, the employer must proceed to the special Form I–9 verification stage described in (l)(2)(iii). If this special Form I–9 verification is unsuccessful, or if the employee refuses to participate in the Form I–9 verification, the employer risks being deemed to have constructive knowledge of unlawful employment of workers in a subsequent enforcement action. As discussed below, however, it is important that employers not administer the Form I–9 verification on a discriminatory basis. Thus, an employer who wishes to follow the safe-harbor procedure should require a Form I–9 verification of all employees who fail to resolve SSA discrepancies, and apply a uniform policy to all employees who refuse to participate or whose Form I–9 verification is unsuccessful.

Some asked for clarification whether the Form I–9 verification stage is optional—in other words, whether employers would be able to terminate employment after sixty [now ninety] days with no resolution and without conducting the Form I–9 verification described in (l)(2)(iii). The Form I–9 verification step in the procedure offers the employee one last chance to show the employer that he or she is not an unauthorized alien. Employers who follow the safe harbor procedure and complete the I–9 verification should not be tempted to mistakenly terminate employment for citizens and authorized aliens. *See also* section III.G. The procedures in this rule provide only a safe harbor in limited circumstances and do not prohibit an employer from terminating the employment relationship.

This Form I–9 verification does not include verifying with SSA that the name and SSN match SSA's records. Because the Form I–9 verification will only be performed when discrepancies are not resolved within the ninety-day period, the name and SSN listed on the new Form I–9 will not match SSA's records. This mismatch will still occur despite the fact that the Form I–9 verification should provide the employer with additional, documentary evidence of the employee's authorization to work. Employers may request, however, that the employee continue to pursue resolution of the discrepancy and inform the employer when the discrepancy is resolved, so that the employer can ensure that another SSA no-match letter will not be generated the following year. Without pursuing resolution of the mismatch, employees' earnings will not be properly credited to their individual earning records.

Some commenters have suggested that the Form I–9 verification described in (l)(2)(iii) may constitute document abuse. "A person's or other entity's request, for purposes of satisfying the requirements of [INA section 274A(b), 8 U.S.C. 1324a(b),] for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably

appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of [INA section 274B(a)(1), 8 U.S.C. 1324b(a)(1)]." INA section 274B(a)(6), 8 U.S.C. 1324b(a)(6). This section is referring to the employment verification requirements under section 274A(b) of the INA, 8 U.S.C. 1324a(b), for persons or entities "hiring, recruiting, or referring an individual for employment."

The safe-harbor procedure described in the present rule, however, does not concern the employment verification requirements under section 274A(b) of the INA, 8 U.S.C. 1324a(b). Instead, it relates to section 274A(a)(2) of the INA, 8 U.S.C. 1324a(a)(2), and whether an employer's actions in response to a no-match letter will lead to a finding that the employer knowingly continued to employ unauthorized aliens. Unlike employers who are conducting an initial Form I–9 verification at the time of hire or a reverification under 8 CFR 274a.2(b)(1)(vii), employers performing a Form I–9 verification under paragraph (l)(2)(iii) as part of the safe-harbor procedure will be determining whether they may continue to employ an individual after receiving notification from SSA or DHS of a problem that remains unresolved. Also, any document presented that contained a suspect SSN or alien registration number would not be facially valid. Under these circumstances, employers can properly require the employee to present a document that does not contain the suspect SSN or alien number, treating all similarly situated individuals in the same manner without regard to their perceived national origin or citizenship status, without committing document abuse under section 274B(a)(6) of the INA, 8 U.S.C. 1324b(a)(6).

Moreover, DHS is not persuaded that the panel opinion's logic in *Zamora* v. *Elite Logistics, Inc.*, 449 F.3d 1106 (10th Cir. 2006), affects this analysis. In *Zamora*, a panel of the Tenth Circuit stated, in a footnote, that the document abuse provision at section 274B(a)(6) of the INA, 8 U.S.C. 1324b(a)(6), might apply to continuing-to-employ situations, but the court also pointed out that the district court held otherwise and that the appeals court would not reach the issue because plaintiff did not appeal that portion of the decision. *See* 449 F.3d at 1113 & n.7. This language was merely dicta, and it does not prevent DHS from promulgating this safe-harbor procedure. As discussed below, the panel opinion no longer has any precedential value. Moreover, in the context of the special verification procedures in paragraph (l)(2)(iii) the employer would be determining whether a document is facially valid (and whether they may continue to employ an individual) after not merely receipt of a no-match letter, but several failed attempts to resolve the discrepancy over more than 90 days after receiving notification from SSA or DHS of the discrepancy. Under ICE's considered interpretation of the relevant statutory provisions (which included consultation with the Department of Justice), section 274B(a)(6) of the INA does not prohibit employers from taking the steps outlined in this regulation and preamble uniformly and without regard to perceived national origin or citizenship status.

8. Other Employer Responsibilities

Some commenters expressed concerns about employers' responsibilities in certain situations that are not specifically addressed by the proposed rule. This rule is not intended to provide bright-line guidance for all possible situations that may arise when employers try to resolve problems raised by SSA or DHS notices. While these safe-harbor provisions provide guidance on what employer actions will not lead to a finding of constructive knowledge of an employee's unauthorized status in certain situations, failure to adhere to the guidance will not necessarily constitute constructive knowledge, either. Rather, the benchmark of constructive knowledge is reasonableness. The rule states that whether an employer will be found to have constructive knowledge that an employee is an unauthorized alien will depend on the totality of relevant circumstances.

Accordingly, the safe-harbor provisions establish one course of action that an employer may take after receiving a notice from SSA or DHS. The provisions contemplate that the particular steps undertaken by the employer in response to an SSA or DHS notice, along with the time the employer takes to act and follow up with appropriate inquiries, will be relevant considerations in the determination of whether the employer took reasonable steps to avoid a finding of constructive knowledge under 8 CFR 274a.1. The ultimate determination of whether an employer will be found to have knowingly employed an unauthorized alien will be based on the totality of the circumstances. The safe-harbor procedure is simply one way for employers to avoid liability under the INA for knowingly employing unauthorized aliens after receiving SSA or DHS notices.

Employers may wish to consider enrolling in USCIS's EEV Program (described at *http://www.uscis.gov/graphics/services/SAVE.htm)*, ICE's IMAGE program (described at *http://www.ice.gov/partners/opaimage/index.htm)*, or other programs administered by private companies that offer electronic Form I–9 completion and retention along with automatic verification through SSA and DHS databases. Employers may find that their use of these programs to verify employment authorization for all new hires reduces problems resulting from discrepancies between employees' Forms I–9 and information in SSA and DHS databases.

F. Discrimination

Several commenters have cited *Zamora* v. *Elite Logistics, Inc., supra,* to argue that the rule conflicts with the anti-discrimination provisions of section 274B of the INA, 8 U.S.C. 1324b. The panel opinion in *Zamora,* which the Tenth Circuit has vacated, would have held only that the district court erred in granting summary judgment to the employer, concluding that a reasonable jury could find that the stated reasons for the employer's conduct were, in fact, a pretext for unlawful discriminatory treatment. *Zamora* v. *Elite Logistics, Inc.*, 316 F.Supp.2d 1107, 1116, 1117–21 (D.Kan. 2004) (granting summary judgment and dismissing case), *rev'd* 449 F.3d at 1115, 1117 (facts not uncontroverted; summary judgment reversed), *vacated* 478 F.3d 1160 (10th Cir. Feb. 26, 2007) (en banc) (affirming judgment of the district court by an equally divided court; affirming judgment). The court of appeals, sitting *en banc,* affirmed by an equally divided court the district court's summary judgment in favor of the employer as to Zamora's claim that his suspension violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and affirmed the district court's summary judgment in favor of the employer as to Zamora's claim that his termination violated Title VII.

An argument that *Zamora* illustrates a conflict between this rule and the antidiscrimination provisions reads too much into the record in *Zamora. Zamora* involved a nationality discrimination claim under Title VII of the Civil Rights Act of 1964, not an unfair immigration related employment practice claim under section 274B of the INA, 8 U.S.C. 1324b. *See* 449 F.3d at 1111. We agree that the concurrences and dissent in the en banc decision make much of the issue, but the issue

remains dicta as the court affirmed the district court on narrow grounds arising only under Title VII. The opinions issued in this litigation do not indicate that the receipt of a no-match letter formed the basis for any action by the employer. *Zamora* illustrates the need for clear procedures on mismatches and this rule provides one such clarification. This rule does not, as the commenters suggest, conflict with the anti-discrimination provisions of the INA or title VII. Employers must comply with all federal statutes in making employment decisions.

G. Firing of Employees

Many commenters argued that the rule would result in employers' immediately firing an employee upon receipt of a no-match letter. The firing of any employee or "churning" of the workforce because of the receipt of a no-match letter is speculative, and is neither required by nor a logical result of the rule being adopted. If, in fact, an employer obtains actual knowledge that a specific employee is an unauthorized alien as a result of the no-match letter—for example, the employee tells the employer so—then the employer should terminate employment. If the employer is concerned about constructive knowledge rather than actual knowledge, however, this safe-harbor procedure is simply one method of resolving the problem while ensuring that DHS does not use the employer's receipt of a DHS or SSA notice as evidence of constructive knowledge.

Some commenters have suggested that promulgation of this final rule will lead to massive firings across the nation. Indeed, one commenter suggested that this safe-harbor procedure will cause employers to "precipitously and indiscriminately" fire employees who are the subject of an SSA no-match letter before the employees are given an opportunity to resolve the problem. As numerous commenters point out, however, employers in the past have been confused about their responsibilities when they receive SSA no-match letters, and this has occasionally resulted in unwarranted termination of work-authorized individuals. This final rule is an attempt to reduce confusion regarding employers' responsibilities under immigration law by providing them a DHS-approved method for resolving Social Security mismatches. This rule should not result in the firing of legally authorized workers.

Moreover, concern over "massive firings" appears to be directed at the issuance of SSA no-match letters themselves, rather than the application of this safe-harbor procedure. For example, some commenters claimed that SSA no-match letters will be used as a pretext for discriminatory firings or retaliation against workers who exercise their workplace rights. As noted above, DHS will not be directing the SSA to issue (or not issue) a no-match letter to an employer. DHS is simply providing guidance to employers on how they may avoid a constructive knowledge finding as they try to resolve the mismatch if they should receive such a notice, and how they may acquire a safe harbor from the use of that letter as evidence of constructive knowledge in establishing liability under the INA.

Commenters were also concerned that the rule puts employers in a "no-win situation," in which they would be liable for discrimination if they terminate an employee who is the subject of a no-match letter, but could also be liable for continuing to employ an alien with constructive knowledge that the alien is unauthorized if they retain the employee. The rule does not impose upon employers any new responsibilities that do not already exist under current law. With or without this rule, employers who have constructive knowledge that certain employees are unauthorized aliens should terminate employment or risk sanctions from DHS. Moreover, employers will not be engaging in unlawful discrimination by uniformly following the procedures of this regulation without regard to perceived national origin or citizenship status.

By contrast, other commenters suggested that the rule will have no impact because employees in the low-wage service industry will simply switch employers if their current employer receives a no-match letter. Changing jobs is not a costless endeavor, however, and an alternative to leaving undisturbed an illegal employment relationship is unacceptable. To the extent the employees referenced in these comments *are* authorized to work, the employees have an incentive to correct the no-match situation. If such a situation stands uncorrected the employees may not receive credit for their earnings.

H. Economic Impact

A number of commenters suggested that the rule would have a substantial economic impact on specific sectors of the economy and the economy broadly. After reviewing these comments, DHS concludes that the suggested impact is speculative. The commenters provided no specific evidence or analysis to support this conclusion. In addition, DHS has found no evidence in the record that substantially supports the notion that the rule will have such an impact. For example, an agriculture association noted the amount of production acreage being moved to Mexico and suggested that its members were required to do so by a lack of labor to cultivate and harvest crops. The reasons that growers may change their acreage under cultivation and where they cultivate are not driven by whether they may find a safe harbor under this rule from possible sanctions for employing aliens not authorized to work. DHS does not believe that this rule has any such economic impact.

Other commenters disagreed over whether the most significant impact would be on large or small businesses—some arguing that corporate structure would impede rapid resolution under the proposed time frame, and others arguing that small businesses would not have the resources to respond to the no-match letters. DHS does not believe that either argument warrants a change in the rule. All employers have the ability to establish their own mailing addresses for personnel management operations and do so routinely in filings with United States governmental agencies. Small employers incrementally have smaller numbers of employees and less difficulty controlling this process. Moreover, both types of commenters misapprehended the rule as an affirmative requirement, rather than an offer of a safe harbor from potential sanctions.

Another commenter expressed concern that these safe-harbor provisions would be too burdensome in the temporary labor context because employers will have difficulty resolving the SSA no-match after the individual is no longer an employee. This rule does not impose on employers a duty to resolve all SSA no-match letters. If the individual is no longer an employee at the time the employer receives the no-match letter, the employer need not act on the SSA no-match letter because the employer is no longer employing the individual.

Some commenters expressed concern that resolution of the SSA no-match letters places too heavy a burden on businesses in general. This concern, however, relates to requirements that currently exist. This regulation does not impose any new duties upon employers, who already have an obligation to avoid liability for inaccurate wage reporting under the Internal Revenue Code. Under existing law, the IRS is authorized to fine employers $50 for each failure to file a complete and accurate wage reporting form (Form W–2), up to a maximum of $100,000 or $250,000. 26

CFR 301.6721–1(a). Employees have an obvious interest in accurate reporting as well. Accurate wage reporting through the use of a Form W–2 allows the SSA to match reported wages to an individual's earnings record, and these reported wages are then used to determine eligibility and amounts for Social Security retirement, disability, and survivors' benefits. The present rule simply provides guidance to employers about what steps they may take in order to avoid being found to have constructive knowledge that an employee is an unauthorized alien.

I. SSA and DHS Database Issues

Several commenters argued that the rule is unwise because the SSA or DHS records may contain inaccuracies or missing information, or because the SSA records are not designed to be used for immigration enforcement. DHS recognizes that studies from the Governmental Accountability Office and other sources describe challenges that must be addressed. However, the rule does not rely on the SSA no-match letters as anything more than indicators of a potential problem—whether that problem is that the employer's records and wage reporting are inaccurate, that the employee is not receiving credit through the SSA for wages earned, or that the employee is potentially an unauthorized alien. The rule merely provides a safe-harbor from a finding of constructive knowledge of employing unlawful workers based on the no-match letter. Accordingly, DHS does not believe that these issues warrant changes in the rule as proposed.

J. Cost to the Government

Several comments expressed concern about the costs that the rule would impose on DHS and SSA. For example, some comments suggested that DHS and SSA would be required by this rule to make a "massive investment" in educational programs. DHS does not believe that an outreach program would cost a substantial amount. None of the comments provided specific data on which DHS can rely and that provide a reasonable basis for generating specific costs. Although DHS appreciates the concern expressed, DHS believes that any costs can be resolved through the regular fiscal budgeting for the Executive Branch.

K. General Impact

Some commenters argue that the rule will have no effect on illegal immigration, and will simply encourage unauthorized aliens to find jobs in the unregulated underground cash economy. This again misunderstands the purpose of the rule. DHS is promulgating this rule to provide guidance to those employers who want to know how they can comply with employment verification requirements after receiving notices from DHS and SSA. This rule will likely have no effect on those employers who are willing to risk civil and criminal penalties in order to hire and exploit unauthorized aliens. DHS also does not view this rule as an easy fix to end employment of unauthorized aliens, but rather as one piece of a comprehensive strategy to resolve a complicated problem. Similarly, commenters' concerns about diminished tax revenue as a result of illegal employment practices and increased costs to DHS and SSA as a result of this final rule have been considered but do not warrant changes in the rule.

Some commenters suggested that the Form I–9 verification procedure under paragraph (l)(2)(iii) would further encourage widespread identity theft and/or document fraud, as undocumented aliens seek ways to avoid the law. For example, an unauthorized alien could simply produce another false document, perhaps one that contains a different SSN or alien registration number. This reasoning does not withstand scrutiny.

First, DHS does not believe that its regulations create the market for such criminal conduct. Instead, this market is fueled by a number of factors, such as a desire by some aliens to work in the United States without regard to United States immigration laws, a high demand for inexpensive labor in certain sectors of the economy, limitations in the existing employment eligibility verification framework, unscrupulous employers willing to exploit unauthorized aliens for profit, and fraudulent document preparers willing to violate the law.

Second, the safe-harbor procedure also deters identity theft, document fraud, and similar crimes by providing employers with notice of a potential problem. The rule provides a last-resort Form I–9 verification procedure to verify an employee's employment authorization and identity. In the event that the employer is unable to verify within ninety days of receiving the SSA or DHS notice that a document, alien number, or SSN is assigned to the employee, this procedure may help expose a larger identity theft problem. Under paragraph (l)(2)(iii)(A)(2), the employer may not accept another document to establish work authorization that contains the same number that is or was the subject of a no-match notification from SSA or DHS. An employee who produces different documents with different numbers, then, depending on the circumstances, may put the employer on notice that the employee has committed document fraud. Thus, an employee who provides such notification would not only face general policies that the employer applies to employees suspected of criminal conduct, *see, e.g., Contreras* v. *Cascade Fruit Co.*, 9 OCAHO No. 1090 (Feb. 4, 2003), but the employee could also face federal prosecution for fraudulently completing a Form I–9. Facing possible termination or prosecution, it is unlikely that undocumented aliens will be "encouraged" by the amended rule to continue to commit such crimes to gain employment.

L. Privacy

Some commenters argued that the proposed rule will not make the world safer or enhance the freedom of citizens; rather, it will lead to neighbors spying on neighbors and the criminalization of good citizens. DHS disagrees. Effective worksite enforcement plays an important role in the fight against illegal immigration and in protecting our homeland. Unauthorized workers employed at sensitive sites and critical infrastructure facilities—such as airports, seaports, nuclear plants, chemical plants, and defense facilities—pose serious homeland security threats. Moreover, DHS has been charged with enforcing United States laws prohibiting employment of unauthorized aliens.

The purpose of the proposed safe-harbor procedure is not to encourage unlawful spying or criminalize the legitimate actions and behavior of good citizens. The rule will provide clarity for employers trying to comply with the law. Employers have a legal obligation under existing law to hire only authorized workers. Employers may not knowingly employ unauthorized aliens and must take action when the federal government notifies them that they may have employed unauthorized aliens or risk being found to have constructive knowledge of that unauthorized employment. Those employers who abuse the immigration system and break the law must be held accountable for their actions. Those employers who were unaware of the facts but act in a reasonable manner to take corrective action when necessary after receiving an SSA or DHS notice will not be found to have violated their legal obligations of the INA.

M. Proposed Changes in Form I–9

Several commenters suggested that the list of documents that are acceptable

proof of employment authorization and other aspects of Form I–9 be improved. DHS recognizes the need to update the list of acceptable documents and make other changes. For example, DHS has also adopted regulations permitting employers to retain and store Form I–9 in electronic format. 71 FR 34,510 (June 15, 2006). DHS will review these recommendations further and may make additional improvements in the future.

III. Regulatory Requirements

A. Regulatory Flexibility Act

The Secretary of Homeland Security, 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 would not have a significant economic impact on a substantial number of small entities. This rule would not affect small entities as that term is defined in 5 U.S.C. 601(6). This rule describes when receipt by an employer of a no-match letter from SSA or DHS may result in a finding that the employer has constructive knowledge that it is employing an alien not authorized to work in the United States. The rule also describes steps that DHS would consider a reasonable response by an employer to receipt of a no-match letter. The rule does not mandate any new burdens on the employer and does not impose any new or additional costs on the employer, but merely adds specific examples and a description of a "safe-harbor" procedure to an existing DHS regulation for purposes of enforcing the immigration laws and providing guidance to employers.

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 one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (1995), 2 U.S.C. 1501 *et seq.*

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (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 or foreign markets.

D. Executive Order 12866 (Regulatory Planning and Review)

DHS considers this rule a "significant regulatory action" under Executive Order No. 12,866, 58 FR 51,735 (Sept. 30, 1993) as amended. Under Executive Order 12,866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this rule describes what specific steps an employer that has received a no-match letter could take that will eliminate the possibility that DHS will find that the employer has constructive knowledge that it is employing an unauthorized alien, this rule raised novel policy issues.

E. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order No. 13,132, 64 FR 43,255 (Aug. 4, 1999), 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 No. 12,988, 61 Fed. Reg. 4729 (Feb. 5, 1996).

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule does not impose any additional information collection burden or affect information currently collected by ICE.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 2. Section 274a.1(l) is revised to read as follows:

§ 274a.1 Definitions.

* * * * *

(l)(1) The term *knowing* includes having actual or constructive knowledge. Constructive knowledge is knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition. Examples of situations where the employer may, depending on the totality of relevant circumstances, have constructive knowledge that an employee is an unauthorized alien include, but are not limited to, situations where the employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification, Form I–9;

(ii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf; and

(iii) Fails to take reasonable steps after receiving information indicating that the employee may be an alien who is not employment authorized, such as—

(A) An employee's request that the employer file a labor certification or employment-based visa petition on behalf of the employee;

(B) Written notice to the employer from the Social Security Administration reporting earnings on a Form W–2 that employees' names and corresponding social security account numbers fail to

match Social Security Administration records; or

(C) Written notice to the employer from the Department of Homeland Security that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I–9 is assigned to another person, or that there is no agency record that the document has been assigned to any person.

(2)(i) An employer who receives written notice from the Social Security Administration as described in paragraph (l)(1)(iii)(B) of this section will be considered by the Department of Homeland Security to have taken reasonable steps—and receipt of the written notice will therefore not be used as evidence of constructive knowledge—if the employer takes the following actions:

(A) The employer must check its records to determine whether the discrepancy results from a typographical, transcription, or similar clerical error. If the employer determines that the discrepancy is due to such an error, the employer must correct the error and inform the Social Security Administration of the correct information (in accordance with the written notice's instructions, if any). The employer must also verify with the Social Security Administration that the employee's name and social security account number, as corrected, match Social Security Administration records. The employer should make a record of the manner, date, and time of such verification, and then store such record with the employee's Form I–9(s) in accordance with 8 CFR 274a.2(b). The employer may update the employee's Form I–9 or complete a new Form I–9 (and retain the original Form I–9), but the employer should not perform a new Form I–9 verification. The employer must complete these steps within thirty days of receiving the written notice.

(B) If the employer determines that the discrepancy is not due to an error in its own records, the employer must promptly request that the employee confirm that the name and social security account number in the employer's records are correct. If the employee states that the employer's records are incorrect, the employer must correct, inform, verify, and make a record as set forth in paragraph (l)(2)(i)(A) of this section. If the employee confirms that its records are correct, the employer must promptly request that the employee resolve the discrepancy with the Social Security Administration (in accordance with the written notice's instructions, if any). The employer must advise the employee of the date that the employer received the written notice from the Social Security Administration and advise the employee to resolve the discrepancy with the Social Security Administration within ninety days of the date the employer received the written notice from the Social Security Administration.

(C) If the employer is unable to verify with the Social Security Administration within ninety days of receiving the written notice that the employee's name and social security account number matches the Social Security Administration's records, the employer must again verify the employee's employment authorization and identity within an additional three days by following the verification procedure specified in paragraph (l)(2)(iii) of this section.

(ii) An employer who receives written notice from the Department of Homeland Security as described in paragraph (l)(1)(iii)(C) of this section will be considered by the Department of Homeland Security to have taken reasonable steps—and receipt of the written notice will therefore not be used as evidence of constructive knowledge—if the employer takes the following actions:

(A) The employer must contact the local Department of Homeland Security office (in accordance with the written notice's instructions, if any) and attempt to resolve the question raised by the Department of Homeland Security about the immigration status document or employment authorization document. The employer must complete this step within thirty days of receiving the written notice.

(B) If the employer is unable to verify with the Department of Homeland Security within ninety days of receiving the written notice that the immigration status document or employment authorization document is assigned to the employee, the employer must again verify the employee's employment authorization and identity within an additional 3 days by following the verification procedure specified in paragraph (l)(2)(iii) of this section.

(iii) The verification procedure referenced in paragraphs (l)(2)(i)(B) and (l)(2)(ii)(B) of this section is as follows:

(A) The employer completes a new Form I–9 for the employee, using the same procedures as if the employee were newly hired, as described in section 274a.2(a) and (b) of this part, except that—

(*1*) The employee must complete Section 1 ("Employee Information and Verification") and the employer must complete Section 2 ("Employer Review and Verification") of the new Form I–9 within ninety-three days of the employer's receipt of the written notice referred to in paragraph (l)(1)(iii)(B) or (C) of this section;

(*2*) The employer must not accept any document referenced in any written notice described in paragraph (l)(1)(iii)(C) of this section, any document that contains a disputed social security account number or alien number referenced in any written notice described in paragraphs (l)(1)(iii)(B) or (l)(1)(iii)(C) of this section, or any receipt for an application for a replacement of such document, to establish employment authorization or identity or both; and

(*3*) The employee must present a document that contains a photograph in order to establish identity or both identity and employment authorization.

(B) The employer must retain the new Form I–9 with the prior Form(s) I–9 in accordance with 8 CFR 274a.2(b).

(3) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274A(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual, except a document about which the employer has received written notice described in paragraph (l)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraphs (l)(2)(i)(C) or (l)(2)(ii)(B) of this section.

Michael Chertoff,

Secretary.

[FR Doc. E7–16066 Filed 8–14–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE270; Special Condition No. 23–210–SC]

Special Conditions: Adam Aircraft, Model A700; Fire Extinguishing for Aft Fuselage Mounted Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Adam Aircraft, Model A700 airplane. This airplane will have

a novel or unusual design feature(s) associated with aft mounted engine fire protection. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 6, 2007

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Regulations & Policy Branch, ACE–111, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, MO 64106; telephone (816) 329–4134; facsimile (816) 329–4090, e-mail at *leslie.b.taylor@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2004, Adam Aircraft applied for a type certificate for their new Model A700. The Model A700 is a 6 to 8 seat, pressurized, retractable-gear, composite structure airplane with two turbofan engines mounted on pylons on either side of the aft fuselage.

14 CFR part 23 has historically addressed fire protection through prevention, identification, and containment. Prevention has been provided through minimizing the potential for ignition of flammable fluids and vapors. Identification has been provided by locating engines within the pilots' primary field of view and/or with the incorporation of fire detection systems. This has provided both rapid detection of a fire and confirmation when it was extinguished. Containment has been provided through the isolation of designated fire zones, through flammable fluid shutoff valves, and firewalls. This containment philosophy also ensures that components of the engine control system will function effectively to permit a safe shutdown of an engine. However, containment has only been demonstrated for 15 minutes. If a fire occurs in traditional part 23 airplanes, the appropriate corrective action is to land as soon as possible. For a small, simple airplane originally envisioned by part 23, it is possible to descend and land within 15 minutes; thus, the occupants can safely exit the airplane before the firewall is breached. These simple airplanes normally have the engine located away from critical flight control systems and primary structure. This has ensured that, throughout a fire event, a pilot can continue safe flight, and it has made the prediction of fire effects relatively easy. Other design features of these simple aircraft, such as low stall speeds and short landing distances, ensure that even in the event of an off-field landing, the potential for the outcome being catastrophic has been minimized.

Title 14 CFR part 23 did not envision the type of configuration of the Model A700 airplane. The Model A700 incorporates two turbofan engines located on pylons on either side of the aft fuselage. These engines are not in the pilots' field of view. With the location in the aft fuselage, the ability to visually detect a fire is minimal.

Type Certification Basis

Under 14 CFR part 21, § 21.17, Adam Aircraft must show that the Model A700 meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–55, thereto.

If the Administrator finds that the applicable airworthiness regulations in 14 CFR part 23 do not contain adequate or appropriate safety standards for the Model A700 because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A700 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Discussion

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Model A700 will incorporate the following novel or unusual design features: The Model A700 incorporates two turbofan engines located on pylons on either side of the aft fuselage. These engines are not in the pilots' field of view. The effects of a fire in such a compartment are more varied and adverse than the typical engine fire in a simple part 23 airplane. With the location in the aft fuselage, the ability to visually detect a fire is minimal. However, the ability to extinguish an engine fire becomes extremely critical with the Model A700 engine location.

While the certification basis for the Model A700 requires that a fire detection system be installed due to the engine location, fire extinguishing is also considered a requirement. A sustained fire could result in loss of control of the airplane and damage to primary structure before an emergency landing could be made. Because of the location of critical structures and flight controls, a means to minimize the probability of re-ignition from occurring is necessary. One acceptable method to minimize re-ignition is to install a two-shot system. The effects of a fire emanating from an enclosed engine installation are more varied, adverse, and more difficult to predict than an engine fire envisioned for typical part 23 airplanes.

Discussion of Comments

A notice of proposed special conditions, Notice No. 23–07–02–SC, for the Adam Aircraft Model A700 was published in the **Federal Register** on June 25, 2007 (72 FR 34644). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model A700. Should Adam Aircraft apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special

conditions are issued as part of the type certification basis for Adam Aircraft, Model A700 airplanes.

Aft fuselage mounted engines need to protect the airplane from fires that were not envisioned in the development of part 23. Therefore, special conditions for a fire extinguishing system are required for airplanes with this engine configuration.

Regulations requiring and defining engine compartment fire extinguishing systems already exist for part 23 commuter category airplanes. These regulations will provide an adequate level of safety for the normal category Model A700 aircraft with its aft pylon mounted engines.

As the extinguishing agent is subject to change during the service life of the airplane, the certification basis needs to include 14 CFR part 23, § 23.1197 in its entirety.

Each fire zone should be ventilated to prevent the accumulation of flammable vapors. It must also be designed such that it will not allow entry of flammable fluids, vapors, or flames from other fire zones. It must be designed such that it does not create an additional fire hazard from the discharge of vapors or fluids.

1. SC 23.1195—Add the requirements of § 23.1195 while deleting "For commuter category airplanes."

23.1195, Fire Extinguishing Systems

(a) Fire extinguishing systems must be installed and compliance shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids or gases for which a fire originating in these sections is shown to be controllable, a fire extinguisher system must serve each engine compartment;

(2) The fire extinguishing system, the quantity of extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one-shot" system may be used except for embedded engines where a "two-shot" system is required.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) If an auxiliary power unit is installed in any airplane certificated to this part, that auxiliary power unit compartment must be served by a fire extinguishing system meeting the requirements of paragraph (a)(2) of this section.

2. SC 23.1197—Add the requirements of § 23.1197 while deleting "For commuter category airplanes."

23.1197, Fire Extinguishing Agents

The following applies:

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

(b) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight) from entering any personnel compartment, even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which—

(1) Five pounds or less of carbon dioxide will be discharged under established fire control procedures into any fuselage compartment; or

(2) Protective breathing equipment is available for each flight crewmember on flight deck duty.

3. SC 23.1199—Add the requirements of § 23.1199 while deleting "For commuter category airplanes."

23.1199, Extinguishing Agent Containers

The following applies:

(a) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(b) The discharge end of each discharge line from a pressure relief connection must be located so that discharge of the fire-extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(c) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(d) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from—

(1) Falling below that necessary to provide an adequate rate of discharge; or

(2) Rising high enough to cause premature discharge.

(e) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

4. SC 23.1201—Add the requirements of § 23.1201 while deleting "For commuter category airplanes."

23.1201, Fire Extinguishing System Materials

The following apply:

(a) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard.

(b) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on August 6, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15973 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM373; Special Conditions No. 25–360–SC]

Special Conditions: Boeing Model 787–8 Airplane; Composite Fuselage In-Flight Fire/Flammability Resistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The fuselage of the Boeing Model 787–8 series airplane will be made of composite materials rather than conventional aluminum. While the regulations include flame propagation standards for some materials commonly found in inaccessible areas of the airplane, they do not yet incorporate standards for materials used to construct the fuselage. Therefore, special conditions are needed to address this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: *Effective Date:* September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of 14 Code of Federal Regulations (CFR) 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as "the 787") meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

In-flight fires have originated in inaccessible areas of aircraft where thermal/acoustic insulation located adjacent to the aluminum aircraft skin has been the path for flame propagation and fire growth. Although these insulation materials were required to comply with the basic "Bunsen burner" requirements of 14 CFR 25.853(a) and 25.855(d), these incidents revealed unexpected flame spread along the insulation film covering material of the thermal/acoustic insulation. In all cases, the ignition source was relatively modest and, in most cases, was electrical in origin (for example an electrical short circuit, arcing caused by chafed wiring, or a ruptured ballast case).

In September 2003, in an effort to limit use of materials that sustain or propagate a fire in inaccessible areas, the FAA promulgated 14 CFR 25.856(a), which requires that thermal/acoustic insulation material installed in the fuselage meet newly developed flame propagation test requirements. That rule was Amendment 25–111. These requirements were developed to address a realistic fire threat. We consider that threat generally applicable to the 787.

Conventional aluminum fuselage material does not contribute to in-flight fire propagation. As a result, there are no standards that address in-flight fire safety of the fuselage structure itself. The 787 will make extensive use of composite materials in the fabrication of the majority of the

- Wing,
- Fuselage skin,
- Stringers,
- Spars, and
- Most other structural elements of all major sub-assemblies of the airplane.

As a result of this extensive use of a new construction material, the fuselage cannot be assumed to have the fire resistance previously afforded by aluminum during the in-flight fire scenario mentioned above. These special conditions require that the 787 provide the same level of in-flight survivability as a conventional aluminum fuselage airplane. This includes its thermal/acoustic insulation meeting the requirements of § 25.856(a). Resistance to flame propagation must be shown, and all products of combustion that may result must be evaluated for toxicity and found acceptable.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–07–09–SC for the 787 was published in the **Federal Register** on April 26, 2007 (72 FR 20774). Two commenters, the Air Line Pilots Association (ALPA) and an individual member of the public, responded to the notice. Both commenters concur with the proposed special conditions but have additional concerns about composite structures that they feel should be addressed.

Comment 1. A member of the public commented that a post-crash, fuel fed fire is a significant hazard that is not addressed in these special conditions. This commenter cites research conducted on behalf of the Australian Government that documents potential fire hazards associated with composite materials—in particular toxicity and smoke. The commenter noted that the fire penetration resistance of a composite material alone is not sufficient to determine its overall contribution to fire safety.

FAA Response: We agree with the commenter that consideration of post-crash fire safety must include all the factors that influence survivability, and not just focus on one characteristic. These special conditions focus on in-flight fire safety, so any issues related to post-crash fire safety go beyond the scope of these special conditions. Nonetheless, the FAA is equally concerned with post-crash survivability and is addressing this issue through separate criteria. In this case, because there are requirements related to post-crash fire safety in § 25.856(b), the approach will be via an equivalent level of safety finding in accordance with § 21.21(b)(1). A summary of this finding will be available in the FAA Regulatory and Guidance Library at *http://rgl.faa.gov/.*

Comment 2. ALPA commented that the effects of moisture ingress must be addressed for all aspects of composite material integrity.

FAA Response: From the standpoint of flammability, moisture ingress is not an issue, because moisture will tend to reduce the flammability of the material. Since these special conditions only concern flammability resulting from an in-flight fire, the remainder of the issues go beyond the scope of these special conditions. Moisture is known to influence properties of composite materials and this concern is a well documented environmental condition that Boeing will have to address. In fact, the use of composite materials in aviation is not new and there is a significant amount of experience with the behavior of composites over time in service. Advisory Circular 20–107A, Composite Aircraft Structure, also discusses factors that need to be addressed when using composite structure.

Comment 3. ALPA also commented that aluminum structure can dissipate heat using the airflow over the skin, but this may not be the case for a composite structure because of its different thermal

conductivity. ALPA believes that this difference must be taken into account with any in-flight fire safety assessment.

FAA Response: We agree that the heat transfer characteristics of aluminum influence its response to an in-flight fire, and that a composite structure will doubtless behave differently. The goal of these special conditions is to enable continued safe flight and landing in the event of an in-flight fire that directly impinges on the fuselage structure. Since these special conditions require Boeing to show that the composite structure is resistant to flame propagation resulting from in-flight fire, all the relevant material properties and performance characteristics of the composite structure will need to be addressed. This requirement is not a comparison with aluminum structure. It is a new requirement for composite structure. Since this is so, the special conditions as written cover the ALPA concern, and these special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 787–8 airplane.

■ In addition to the requirements of 14 CFR 25.853(a) governing material flammability, the following special conditions apply:

The 787–8 composite fuselage structure must be shown to be resistant to flame propagation under the fire threat used to develop 14 CFR 25.856(a). If products of combustion are observed beyond the test heat source, they must be evaluated and found acceptable.

Issued in Renton, Washington, on August 6, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16020 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28669; Airspace Docket No. 07–ASO–18]

Removal of Class E Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E4 Airspace at Columbus Lawson Army Air Field (AAF), Columbus, Ga. This Class E4 airspace was associated with a Nondirectional Radio Beacon (NDB) Runway (RWY) 03 Standard Instrument Approach Procedure (SIAP), which has been cancelled, as RWY 03–21 has been permanently closed.

DATES: *Effective Date:* 0901 UTC, October 25, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

History

The NDB RWY 03 SIAP was cancelled due to the permanent closure of RWY 03–21. The cancellation and runway closure, therefore, requires the removal of Class E4 airspace. This rule becomes effective on the date specified in the "Effective Date" section. Since this action will eliminate the impact of controlled airspace on aircraft in the vicinity of Columbus Lawson AAF, GA, notice and public procedure under 5 U.S.C. 553(b) are not necessary. Designations for Class E airspace areas extending upward from the surface of the earth are published in Paragraph 6004 of FAA Order 7400.9P, dated September 01, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 removes Class E4 airspace at Lawson AAF, Columbus, Ga.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ASO GA E4 Columbia Lawson AAF, GA [REMOVED]

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Issued in College Park, Georgia, on July 5, 2007.

Mark D. Ward,

Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–3962 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2005–22449; Amendment No. 121–334]

RIN 2120–AI16

Flightdeck Door Monitoring and Crew Discreet Alerting Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Federal Aviation Administration (FAA) regulations by requiring operators of passenger-carrying transport category airplanes used in domestic, flag, and supplemental operations to have a means for flightcrew to visually monitor the door area outside the flightdeck. This means will allow the flightcrew to identify persons requesting entry into the flightdeck and detect suspicious behavior or potential threats. This final rule also amends FAA regulations to require that, for operations requiring the presence of flight attendants, the flight attendants have a means to discreetly notify the flightcrew of suspicious activity or security breaches in the cabin. This final rule addresses standards adopted by the International Civil Aviation Organization (ICAO) following the September 11, 2001 terrorist attacks.

DATES: Effective October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Air Transportation Division, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166, facsimile (202) 267–9579, e-mail: *joe.keenan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/*; or

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

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

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

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing:

- Minimum standards required in the interest of safety for the design and performance of aircraft, and;
- Regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of that authority because it prescribes:

- New standards for the safe operation of transport category airplanes, and;
- Practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

Background

Following the terrorists' acts on September 11, 2001, the Office of the Secretary of Transportation, Congress, and the FAA took several long term actions to prevent hijackings on passenger-carrying airplanes used in air carrier service. As part of those actions, the FAA published the notice of proposed rulemaking (NPRM), "Flightdeck Door Monitoring and Crew Discreet Alerting Systems" (70 FR 55492; September 21, 2005). That NPRM proposed requiring operators of passenger-carrying transport category airplanes used in domestic, flag, and supplemental operations to have a means for flightcrew to visually monitor the door area outside the flightdeck. The NPRM also proposed that, for operations requiring the presence of flight attendants, flight attendants have a means to discreetly notify the flightcrew of suspicious activity or security breaches in the cabin. The proposed changes addressed standards adopted by the International Civil Aviation Organization following the September 11, 2001 terrorist attacks.

Before issuing the NPRM, the FAA participated in the rapid response teams (RRTs) created by the Secretary of Transportation to develop recommendations for improving security within the national aviation system. One team was tasked with developing recommendations to improve security at the nation's airports; the other team was tasked with developing recommendations for aircraft integrity and security, with a specific focus on cockpit access.

Members of the aircraft integrity and security RRT included representatives from American Airlines, the Boeing Company, the Association of Flight Attendants, and the Air Line Pilots Association. Members of the Department of Transportation and the FAA supported the security RRT. In addition to regular team meetings, this RRT met with representatives from the airline operators, pilot and flight attendant associations, and parts manufacturers. The security RRT also received numerous recommendations from the public as the result of an e-mail address on the FAA Web site.

On October 1, 2001, the RRT for aircraft integrity and security presented its final report to the Secretary of Transportation. The report made 17 recommendations. One recommendation recognized the need for reinforced flightdeck doors and severe limitations on flightdeck entry. Anticipating the new severe limitations on flightdeck entry, the RRT made several recommendations for flightdeck access. These included:

- Flight attendants must have a method for immediate notification to

the flightcrew during a suspected threat in the cabin.

• The flightcrew needs the capability to monitor the area outside the flightdeck door.

On November 19, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) (Public Law 107–71). Section 104(b) of the ATSA states that the FAA Administrator may develop and implement methods—

(1) To use video monitors or other devices to alert pilots in the flight deck to activity in the cabin, except that use of such monitors or devices shall be subject to nondisclosure requirements applicable to cockpit video records under [49 U.S.C. § 1114(c)], * * * and

(3) To revise the procedures by which cabin crews of aircraft can notify flight deck crews of security breaches and other emergencies, including providing for the installation of switches or other devices or methods in an aircraft cabin to enable flight crews to discreetly notify the pilots in the case of a security breach occurring in the cabin.

The NPRM responded to the RRT's findings and to the legislation passed by Congress.

Summary of NPRM

The FAA proposed to add the new paragraph (k) to § 121.313. This requirement would apply to all passenger-carrying airplanes that must have a lockable flightdeck door pursuant to 14 CFR 121.313(f). Operators of these airplanes must be able to monitor the area outside the flightdeck door from the flightdeck. This measure would provide the means to allow the flightcrew to identify persons requesting entry and to detect suspicious behavior and potential threats.

The FAA proposed to add the new § 121.582 that would require all passenger-carrying airplanes required to have a lockable flightdeck door to have an approved means by which the cabin crew can discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin.

The FAA also proposed to add the new § 121.584. This would prohibit unlocking or opening the flightdeck door unless a person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that: (1) The area outside the flightdeck door is secure; and (2) if someone outside the flightdeck door is seeking to have the flightdeck door opened, that person is not under duress.

Summary of the Comments

The FAA received 88 comments. Of these comments, 45 stated strong support for the rule; only 5 opposed the rule. Of the 45 stating strong support for the rule, 6 commenters seemed to support the rule because they thought a video camera was the only means to comply with the requirement to monitor the flightdeck door. They may not have supported the proposal had they realized that video is not the only means to satisfy the requirement. The remaining comments did not directly express support for or opposition to the rule. Many comments included suggested changes, as discussed below.

I. Discussion of the Final Rule

A. Means of Monitoring the Area Outside the Flightdeck

The final rule sets a performance standard whereby air carriers must choose a method of compliance to view the area outside the flightdeck door. The performance standard may be met using a video monitoring device, a peephole or viewport, or other viewing device. The method of compliance must include procedures and training in existing part 121 requirements for unlocking the flightdeck door and operating all of the associated equipment for use in operations.

Several commenters including Boeing, Coalition of Airline Pilots Associations (CAPA), Association of Professional Flight Attendants (APFA), the Regional Airline Association (RAA), the Air Transport Association (ATA), and the Allied Pilots Association (APA) supported the use of current technology and procedures. The APA and CAPA stated that in the few cases when there is a need to open the flightdeck door, established procedures allow safe and secure passage from the flightdeck. Those procedures have stood the test of time and have a credible record of effectiveness. The RAA noted that nearly all their members presently use the peephole/audio method of confirming that the area outside the flightdeck door is secure before opening the door during flight. They saw no additional security benefit to using a video camera system over using their current peephole system to monitor the area outside the flightdeck door. The APFA and Boeing supported a viewing device in the flightdeck door that allows for the door and forward cabin to be monitored.

Several of the commenters thought that the FAA had proposed to require the use of video cameras to monitor the area outside the flight deck door and require wireless devices for discreet communication between cabin crewmembers and flight crewmembers. In particular, the Air Crash Victims Families Group and Families of September 11 expressed support for a requirement to install video cameras to monitor the area outside of the flight deck door. They also supported requiring wireless devices by the cabin crew to alert the flightdeck crew of a potential problem.

The FAA developed this rule over a period of years following the terrorist attacks of September 11, 2001, taking into consideration recommendations concerning flightdeck security and crew communications. While this action promulgates regulations for added protection of the flightcrew compartment, most part 121 air carriers already have procedures in place that perform this function. This rule allows U. S. air carriers options to meet requirements while remaining flexible in their methods. This flexibility provides an additional level of security to the public because air carriers will use different methods to provide flight deck security and crew communication. Different methods of compliance will make attempts to breach security more difficult because multiple systems will be more difficult to monitor and defeat.

Two commenters, former Congressman Bob Barr and the American Conservative Union, opposed the rule because of safety-related concerns resulting from increased pilot workload to monitor video cameras. The FAA does not believe that monitoring the area outside of the flightdeck door by the flightcrew will distract pilots or add a significant burden if video cameras are used. While air carriers may choose approved video cameras, a FAA-approved procedure-based approach (using procedures and hardware already installed, such as a peephole) is another option. Accordingly, pilots will not have to continuously monitor a video camera, they need only monitor the flightdeck door area when someone seeks access to the flightdeck or when notified by a flight attendant.

Former Congressman Bob Barr and the American Conservative Union also expressed concerns about passenger privacy in the cabin. The FAA is not imposing any requirement to monitor passengers beyond the area outside of the flight deck door. To the extent that a passenger is in the flightdeck door area, the FAA has a security interest in monitoring that passenger's activities.

B. Means of Notifying the Flightcrew

Several commenters, including Capitol Electronics, Inc., expressed concern over the interphone system and its inability to be used discreetly. They stated that the interphone is an obvious piece of equipment, could be compromised, and would be difficult to

use without arousing suspicion. They noted that when passengers or equipment (such as beverage carts) are in the aisles, the crew could find it difficult to reach the interphone quickly. These commenters stressed that a wireless system is the only discreet means for the cabin crew to notify the flightdeck of a problem.

The FAA notes that the interphone system is not intended to be an encrypted or a secure communication means, rather it is a way for all crewmembers to be able to communicate among themselves throughout the passenger cabin and the flightdeck. Nevertheless, if a crewmember uses the existing technology of the interphone system while adhering to the air carrier's communication procedures, discreet communication may be maintained. Conversations between crewmembers on the interphone are generally not broadcast over the aircraft's public address system and the system has the ability for all crewmembers to participate on the call, as company procedures may dictate. The ability of the crewmembers to communicate discreetly in many instances currently exists, primarily by following the operator's procedures.

Some commenters, including the Professional Flight Attendants Association and the Association of Professional Flight Attendants, recommended that flight attendants carry or have in their possession a wireless device to contact the flightdeck. Some suggested the flight attendant carry a wireless device in a pocket or around the neck.

The FAA does not believe requiring flight attendants to carry or have in their possession a wireless device to contact the flight deck is a good idea. A wireless device that is carried on the person (in a pocket or around the neck) may be problematic because an attacker could threaten or assault the flight attendant in order to obtain the wireless device and then use the device fraudulently to gain access to the flightdeck. Additionally, devices carried by an individual are subject to events that may be beyond the control of the air carrier. An entire security system could be compromised if a device in the personal possession of a flight attendant is lost or stolen.

Additionally, the cost to supply a wireless device to each flight attendant could be an unreasonable burden, as there are approximately 130,600 part 121 flight attendants. While the wireless communication device is an option for discreet communication, wireless communication is not the only available option. This rule is permissive in the sense that an air carrier may elect to use a sophisticated (for example, wireless) communication method, but this rule does not impose a new requirement for such devices.

In the NPRM, the FAA suggested that the evacuation system could be used as a compliant communication method. As noted by the Association of Professional Flight Attendants, not all aircraft have an emergency evacuation system available.

C. Entry to the Flightdeck

This regulation states that no person may unlock or open the flightdeck door unless a person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that a person seeking entry to the flightdeck is not under duress.[1] The FAA has made a technical correction to § 121.584. We state that the requirements of the entire paragaph (a) must be satisfactorily accomplished before the crew member in charge on the flightdeck will authorize unlocking and opening the door.

Bosch Security Systems, CAPA, and the APA recommended that the FAA require installation of a secondary barrier, in addition to the flightdeck door, on all airplanes that are used in operations affected by this rule. Requiring installation of a secondary barrier would mean reconfiguring each airplane affected. Such an operation would require a major effort that is outside of the scope of this rulemaking and is therefore not adopted.

The International Brotherhood of Teamsters requested the FAA define "the area outside the flightdeck door." Such a definition would vary depending upon the configuration differences among airplanes. There are many areas adjacent to flightdeck doors where an intruder could hide. This fact tends to validate the importance of the audio check from inside the flightdeck with a crewmember in the cabin prior to opening the flightdeck door.

Boeing requested the FAA change the requirement to confirm that a person seeking flightdeck access is not under duress. They noted that "duress" may take the form of both visible and non-visible actions. They further stated that there is "no definable or verifiable means of compliance for this as a requirement." Boeing suggests changing the requirement that a crewmember evaluate whether a person is under duress, to simply require identification of a person seeking access to the flightdeck. FAA rules already require any person seeking flightdeck access to be identified before admittance. Section 121.587(b) limits persons on the flightdeck to those eligible under § 121.547. In addition, air carriers already have procedures in place regarding how and when to open a flightdeck door. The concept of determining whether someone is under duress is already applied in current procedures and appears to be readily understood. Air carriers should use the FAA-approved procedures already in place to determine whether someone is under duress. Because duress remains a threat not fully accommodated by the existing requirement that the person seeking access to the flightdeck is authorized to enter, the requirement to check that a person is not under duress remains unchanged.

Boeing also commented on the proposed requirement for both an audio and a visual check before opening the flightdeck door. They stated that most operators have adopted a visual procedure using the door peephole or an installed flightdeck entry visual surveillance system. Boeing made the assumption that use of the cabin interphone system is required to meet the audio procedure requirement. Boeing suggested revising the rule to require "an approved procedure and approved visual device," which does not include a requirement for an audio check. Boeing stated that most major airlines are using a visual procedure/device, but not an audio procedure. It maintained that a robust visual device and an approved procedure to verify that the area around the flightdeck door is secure will satisfy the intent of the rule. It also claimed that requiring both a visual and an audio procedure could create an undesirable operational impact on the flightdeck. This could occur if the interphone equipment was not easily accessible to the person making a visual check of the door area. It did not state the basis for this observation. The FAA has determined that both a visual and audio check is required to provide an appropriate amount of security prior to opening the flightdeck door. Neither check alone provides adequate security. A video camera system may not provide complete coverage of the area outside of the flightdeck door or confirm that any

[1] Use of the word "approved" is a common term used in FAA regulations. Unless otherwise specified, it means approved by the Administrator. The approval for the audio and visual procedures is accomplished by letter from the Principal Operations Inspector for the air carrier. The approval for the viewing device was accomplished by the FAA's Aircraft Certification Office as part of the Supplemental Type Certificate issued for the design changes for the flightcrew compartment door.

lavatory in that area is unoccupied. An audio check with a crewmember in the cabin that has verified that the area is clear is required. Likewise, it would be very difficult to determine if a person seeking access to the flightdeck was under duress without an audio as well as a visual check. An air carrier's procedures for opening the flightdeck door are already required to include both checks. Therefore, the requirement for both an audio and visual check remains unchanged from current practice.

Boeing requested the FAA change the requirement in § 121.584(a)(2) concerning authorization to unlock the flightdeck door from "the crewmember in charge" to "an authorized crewmember." Boeing stated its concern that the phrase "the crewmember in charge" can be interpreted always to require the pilot-in-command (PIC) to authorize unlocking and opening of the flightdeck door. While the FAA agrees with Boeing's interpretation of the proposed requirement, it does not share Boeing's apparent concern. Section 91.3(a) states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." While the PIC may delegate functions to other crewmembers, the PIC remains responsible for the outcome of those functions. An air carrier's approved procedures are required to address opening of the flightdeck door while flight crewmembers leave or return to the pilot's compartment. While functions, such as unlocking and opening the flightdeck door may be delegated, the responsibility for such action rests with the PIC. Therefore, the requirement for "the crewmember in charge" remains unchanged.

Aircraft Operators should be aware that the Transportation Security Administration (TSA) is reviewing the procedures that are in use for ingress and egress through the flight deck door during flight, and is considering additional procedures that may be necessary to address security concerns. TSA will coordinate with the FAA during the development of any proposed additional requirements.

D. International Standards

As stated in the NPRM, the International Civil Aviation Organization (ICAO) adopted standards on March 15, 2002 that require installing flightdeck doors, locking and unlocking such doors, monitoring the area on the passenger side of the flightdeck door, and discreetly notifying the flightcrew in the event of security breaches in the cabin. The standards are located in ICAO Annex 6, Part 1, Chapter 13, provision 13.2, which state:

13.2.1 In all aeroplanes which are equipped with a flight crew compartment door, this door shall be capable of being locked, and means shall be provided by which cabin crew can discreetly notify the flight crew in the event of suspicious activity or security breaches in the cabin.

13.2.2 From 1 November 2003, all passenger-carrying airplanes of a maximum certificated take-off mass in excess of 45500 kg or with a passenger seating capacity greater than 60 shall be equipped with an approved flight crew compartment door that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons. This door shall be capable of being locked and unlocked from either pilot's station.

13.2.3 In all aeroplanes which are equipped with a flight crew compartment door in accordance with 13.2.2:

(a) This door shall be closed and locked from the time all external doors are closed following embarkation until any such door is opened for disembarkation, except when necessary to permit access and egress by authorized persons; and

(b) Means shall be provided for monitoring from either pilot's station the entire door area outside the flight crew compartment to identify persons requesting entry and to detect suspicious behavior or potential threat.

In the NPRM, the FAA identified three areas where the proposed rule did not appear to meet ICAO standards. We stated in the NPRM:

- The proposal in this action will not be implemented before the November 1, 2003 ICAO deadline.
- Any passenger-carrying airplanes operated under parts 91, 125, and 135 including international commercial air transport operations with a maximum certificated takeoff mass in excess of 45500 kg or with a seating capacity of greater than 60 (as ICAO requires), are not covered by this proposed rule.
- The proposed rule will permit an alternative means to monitor the area outside the flightdeck door from the flightdeck side of the door, instead of from either pilot station, as ICAO requires.

L–3 Communications and the International Brotherhood of Teamsters state that the rule falls well short of ICAO standards and ATSA requirements because the viewport option and existing interphone systems do not adequately address ICAO requirements. L–3 Communications expresses support for cameras and wireless devices in meeting these requirements.

The International Air Transport Association (IATA) commented that it is concerned that the United States (U.S.) will continue to have differences with the ICAO standard. IATA is concerned that other national authorities may take a different view on the applicable ICAO standards. They ask that the FAA work with its international partners. Several commenters, including Delta Airlines, the Transport Workers Union of America, the CAPA, the Air Transport Association, and the APA generally agree with the FAA that the new rule meets the intent of ICAO standards addressing flightdeck security. ICAO implementation guidance provides for a procedural-based approach.

Upon further review of the ICAO standards associated guidance and FAA actions, we have determined that only one of three perceived differences remains. First, concerning the ICAO implementation date, the FAA discovered that if an ICAO member country has policies in place before the implementation date for the ICAO standard, the member country is considered to be in compliance with the ICAO standard. The FAA published Notice N8400.51, Procedures for Opening, Closing, and Locking of Flightcrew Compartment Doors before November 1, 2003. This notice addresses air carrier procedures to open the flightdeck door during flight operations and addresses the intent of the ICAO standards for monitoring the area outside the flightdeck door. In accordance with ICAO guidance, the FAA met the intent of the standard before the ICAO implementation date of November 1, 2003.

Second, the FAA has met the intent of the ICAO requirement to monitor from either pilot's station the entire door area outside the flight crew compartment. ICAO guidance permits operators to use different methods to monitor the area outside the flightdeck door. The monitoring does not have to take place from "either pilot's station," as a plain reading of the ICAO standard indicates. According to ICAO, use of a spyhole or peephole would satisfy the requirement to monitor the area outside the flightdeck door. Since this final rule adopts a performance standard that contemplates the type of system that ICAO states is sufficient to meet the ICAO standard, the FAA determines no difference exists.

Finally, the ICAO standard is applicable to passenger-carrying airplanes based on weight or seating capacity. The FAA regulations differ from the ICAO standard regarding applicability. As explained in the NPRM, ICAO provisions apply to passenger-carrying airplanes of a maximum certificated take-off mass in excess of 45,500 kg or with a passenger seating capacity greater than 60. The

FAA standard applies to all part 121 operations. U.S. aviation regulations governing airplanes operated under parts 91, 125, and 135 may be within the weight and passenger seating capacity required by the ICAO standard; however, airplanes operating under these parts are not specifically required to have a flightdeck door. We therefore find it impractical to impose a viewing requirement on airplanes operating under these parts. We also find it impracticable to impose a communication procedure requirement when there is no way to prevent access to the flightdeck.

We will carefully monitor these types of operations and if it becomes a matter of concern in the future, we will consider adopting the ICAO standard, based on weight, instead of by operating rule. In addition, if an air carrier is subject to the ICAO requirement (or foreign regulations) because of weight or seating capacity but not subject to FAA requirements, the FAA will, upon request, work with any operator to consider any approvals necessary to satisfy requirements by another civil aviation authority that an operator have approved procedures in place. We do not believe there will be any need to provide accommodation for the ICAO requirement on monitoring the area outside the flightdeck because we believe all of the reinforced flightdeck doors are already outfitted with a peephole.

The Association of European Airlines states that any final rule on flightdeck door monitoring and crew discreet alerting should not apply to non-U.S. operators to the United States. This rule does not apply to non-U.S. operators, including those operating under part 129. These operations are covered by adequate regional and international rules and standards.

E. Compliance Dates

In the NPRM, the FAA proposed to give part 121 passenger-carrying operators not already in compliance with the rule, two years to install a monitoring device to meet the proposed performance standard on the existing fleet. We also proposed a 180-day compliance date for the discreet communications procedure.

Several individual commenters, including the Air Transport Association, expressed concerns about compliance dates. These comments all stated that the compliance period was too short. Some expressed concern with the immediate effective date for operations of airplanes that already have a means to monitor the flightdeck door area, required by § 121.584(b). ATA expressed concern that two years would not be enough time to install a video surveillance system. ATA recommended a five- or six-year interval.

After further review, the FAA has determined that every part 121 passenger-carrying operator should already have a means to monitor the flightdeck door area. The FAA learned from flightdeck door manufacturers that every reinforced flightdeck door that meets the requirements of section 25.795 (required for passenger-carrying operations in part 121) has a peephole that meets the requirements of this rule. As a result of this information, the FAA has determined that there should be no retrofit of airplanes operated by part 121 carriers. Accordingly, the FAA has decided against adopting a two-year compliance period in proposed section 121.584(b). If a part 121 passenger-carrying operator does not have a means to monitor the flightdeck door area, the operator can: (1) Operate without opening the flightdeck door until the airplane is retrofitted; or (2) seek relief by applying to the FAA for exemption from this rule.

As discussed above, we are issuing this final rule with a reduced compliance period. The NPRM proposed to give operators that do not have a means to view the area outside the flightdeck door two years to install such a means. The FAA proposed to require operators that have a means to monitor the area outside the flightdeck door to comply on the effective date of the final rule. After review of the comments to the NPRM and FAA actions regarding reinforced doors, we decided to change the compliance date for all affected parts to 60 days.

First, air carriers conducting passenger-carrying operations under part 121 were required to install a reinforced door by April 9, 2003. The FAA concluded, by review of supplemental type certificates, that no airplanes operating passenger-carrying service under part 121 have a flightdeck door without a means to monitor the area outside the flightdeck door. Second, no commenter specifically stated that they were currently not in compliance with the rule. The only comment relevant to this inquiry was from ATA, which stated that if an operator chose to install video, it would take more than two years to do so.

Similarly, the FAA confirmed that part 121 passenger-carrying operators should already have an approved means in place for a cabin crew to discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin. Therefore, the FAA removed the 180-day compliance date from § 121.582. The compliance period for the entire rule is now 60 days.

The FAA is limiting the compliance period without providing an opportunity for prior public notice and comment as is normally required by the Administrative Procedure Act (APA). See 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). The FAA finds good cause for shortening the compliance period in this final rule because it would be contrary to the public interest not to do so. A two-year compliance period is contrary to the public interest because we determined that every operator already has equipment installed to comply with this rule. The only outstanding compliance concern could be that some operators need to develop and implement procedures to monitor the area outside the flightdeck (for example, by looking through the peephole) before opening the flightdeck door. Therefore, the FAA is allowing a 60-day compliance period, so any operator that must adopt procedures will have time to do so.

F. Miscellaneous Issues

Several commenters, including the CAPA and Air Line Pilots Association International, recommended the FAA include all-cargo operations in this rule. These commenters noted that cargo operations should be as safe and secure as passenger operations. They recommended the FAA require installation of a secure flightdeck door on part 121 cargo airlines.

While all-cargo operators may implement the requirements of this rule, they are not specifically required to do so. All-cargo flights carry only those individuals allowed under 14 CFR 121.583; all individuals carried on cargo flights are screened through TSA approved procedures. The general traveling public is not allowed onboard these flights. ICAO standards in this area reflect this awareness in that they apply only to passenger-carrying operations. In keeping with ICAO standards and security requirements, the FAA developed a performance-based approach for operations conducted under the passenger-carrying requirements of part 121. The FAA and TSA believe that security measures in place to protect the flightdecks of all-cargo operations are adequate for those operations, considering the small number of persons allowed onboard for those flights. Therefore, the FAA does

not apply this rule to all-cargo operations.

Several commenters, including the Air Transport International, L.L.C., expressed concerns about the rule's applicability to part 121 operations. They stated the rule should not apply to Combi-configured aircraft that mainly transport cargo. While these aircraft can transport up to 32 passengers, the commenters believe they have sufficient security measures in place to prevent anyone from gaining access to the flightdeck. The FAA notes that the requirements of this rule apply to passenger-carrying operations conducted under part 121. When operations are conducted that are subject to the passenger-carrying requirements of part 121, including flights carrying passengers and cargo, those operations must also meet the requirements of this rule.

Several commenters, including the Transport Workers Union of America and the Association of Professional Flight Attendants, refer to the "lessons learned" from the Operation Atlas exercise. The FAA was not a participant in this exercise to measure response and recovery efforts. Comments about the Operation Atlas exercise are outside of the scope of this rulemaking activity.

US Airways requested clarification on use of Minimum Equipment Lists (MEL) with regard to the equipment required by this rule. Since this is a rule of general applicability it does not impact an individual operator's MEL. Each individual MEL is developed by the operator and approved by its Principal Operations Inspector. Pertinent MEL relief is provided through the Master Minimum Equipment List (MMEL). Development of the MMEL is beyond the scope of this rule, especially because this rule is a performance standard. Since this rule does not require any new equipment, each air carrier should refer to its already established MEL and question its POI for further information.

II. Regulatory Notices and Analyses

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this rule.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandate Assessment

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

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Every reinforced cockpit door has a peephole, which meets the final rule requirement to visually identify anyone attempting to enter the flightdeck. Operators can comply by developing appropriate procedures. Most operators have already developed these procedures and we determined that there will be minimal expense to the operators that still need to develop them to meet the requirement.

Further, the final rule requirement that the crew members be able to alert the flightdeck of any cabin problems can also be met by a variety of measures such as special signals through the interphone system or modifications of existing crew notification devices or procedures. We also determined that there will be minimal expense to the operators to implement these measures.

In the NPRM, we had estimated the costs of operators installing video camera surveillance systems. As the final rule does not require such a system, the costs for an operator that chooses to install such a system are not a cost of compliance with the final rule. We received several comments on our estimated costs and these can be reviewed in the docket for this rulemaking.

In general, we believe these comments support the estimates in the NPRM after taking into account the experience of the commenters in installing such systems. While Boeing's estimate was significantly higher than ours, its system is far more sophisticated than any video system designed to minimally meet the performance standard. Since all of the costs are associated with a monitoring system that is not required by the rule and is redundant to existing, compliant systems already aboard all affected aircraft, we are not discussing the comments further.

The rule is one of a series of rulemaking actions aimed at preventing or deterring an occurrence similar to the September 11 terrorist attacks. It is designed to ensure that pilots do not open the flightdeck door and admit a potential hijacker because the pilots will be able to recognize who is trying to gain entry. It is also designed to alert the pilots to problems in the cabin through the crew discreet monitoring system and allow them to take the appropriate actions.

This rule responds to the interest of the U.S. Congress as specified in the ATSA and to the ICAO flightdeck surveillance requirement for international travel airplanes with more than 60 seats. We conclude that the benefits of this final rule will exceed the minimal costs.

The FAA has, therefore, determined that this final rule is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities,

including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

Due to its minimal costs, the final rule will have a minor effect upon small businesses. We also received no comments from the public on the economic impact of the proposed rule on small entities. We are sensitive to the needs of small businesses and thus have found a minimal cost solution that meets our security needs.

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

Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and, therefore, no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate.

Executive Order 13132, Federalism

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

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

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

Regulations that Significantly Affect Energy Supply, Distribution, or Use

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

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Section 121.313 is amended by adding paragraph (k) to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(k) Except for all-cargo operations as defined in § 119.3 of this chapter, for all passenger-carrying airplanes that require a lockable flightdeck door in accordance with paragraph (f) of this section, a means to monitor from the flightdeck side of the door the area outside the flightdeck door to identify persons requesting entry and to detect suspicious behavior and potential threats.

■ 3. Add § 121.582 as follows:

§ 121.582 Means to discreetly notify a flightcrew.

Except for all-cargo operations as defined in § 119.3 of this chapter, after October 15, 2007, for all passenger carrying airplanes that require a lockable flightdeck door in accordance with § 121.313(f), the certificate holder must have an approved means by which the cabin crew can discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin.

■ 4. Add § 121.584 as follows:

§ 121.584 Requirement to view the area outside the flightdeck door.

From the time the airplane moves in order to initiate a flight segment through the end of that flight segment, no person may unlock or open the flightdeck door unless:

(a) A person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that:

(1) The area outside the flightdeck door is secure, and;

(2) If someone outside the flightdeck is seeking to have the flightdeck door opened, that person is not under duress, and;

(b) After the requirements of paragraph (a) of this section have been satisfactorily accomplished, the crewmember in charge on the flightdeck authorizes the door to be unlocked and open.

Issued in Washington, DC, on August 6, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. E7–16063 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 700

Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 600 to 799, revised as of April 1, 2007, in § 700.27, on page 138, paragraph (d) is reinstated to read as follows:

§ 700.27 Use of prohibited cattle materials in cosmetic products.

* * * * *

(d) *Adulteration.* Failure of a manufacturer or processor to operate in compliance with the requirements of paragraph (b) or (c) of this section renders a cosmetic adulterated under section 601(c) of the act.

[FR Doc. 07–55510 Filed 8–14–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 51

RIN 1400–AC23

[Public Notice: 5894]

Rule Title: Passport Procedures—Amendment to Passport Surcharge

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule amends the Department of State's regulation implementing the requirements of the Passport Services Enhancement Act of 2005, amending the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). The Passport Services Enhancement Act authorizes the Department of State to assess a surcharge on applicable fees for the filing of each passport application to offset its additional costs. This rule will raise the surcharge based on a current estimate of the increased passport demand due to actions taken to comply with section 7209(b) of IRTPA. The surcharge will continue to be collected from within the passport application fee and will not increase the overall current cost of the passport to the applicant.

DATES: *Effective date:* This interim rule is effective on August 15, 2007.

Comment period: The Department of State will accept written comments from interested persons up to September 14, 2007.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- *E-mail: PassportRules@state.gov.* You must include the Regulatory Identification Number (RIN) in the subject line of your message.
- *Mail:* (paper, disk, or CD–ROM submissions): An original and three copies of comments should be sent to: Susan Bozinko, Office of Passport Services, Legal Affairs Division, Planning and Advisory Services, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037. 202–663–2427.
- *Fax:* 202–663–2499. You must include the Regulatory Identification Number (RIN) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: For *passport issuance policy:* Susan Bozinko, Division Chief, Office of Passport Services, Legal Affairs Division, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037. (202) 663–2427. E-mail: *PassportRules@state.gov.* For *consular fee setting policy:* Tracy Henderson, Director of the Budget, Bureau of Consular Affairs, U.S. Department of State, Suite H1004, 2401 E St., NW., Washington, DC 20520, or by e-mail: *fees@state.gov.*

SUPPLEMENTARY INFORMATION: The Passport Services Enhancement Act (Pub. L. 109–167, January 10, 2006, 119 Stat. 3578) authorizes the Secretary of State to establish, collect, and retain a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 8 U.S.C. 1185).

In March 2006, the Department of State had commissioned an independent cost of service survey to examine the resource implications of the increased demand for passports under the Western Hemisphere Travel Initiative (WHTI), the Administration's proposal to address the requirements of the IRTPA, and to determine the appropriate amount of the surcharge. That survey estimated that uncompensated WHTI-related costs borne by the Department of State would reach $289 million during the period FY2006–FY2008. It also projected that a six-dollar surcharge retained by the Department of State would enable it to meet the costs of increased passport demand during that period. Accordingly on August 15, 2006, the Department of State published an interim rule providing for a surcharge of $6 per passport application. However, the demand and costs proved to be greater than originally estimated and thus the Department now projects that uncompensated demands during the period FY2008 to FY 2010 will reach $944 million. The Department has therefore determined that to meet its increased costs, it will need to retain $20 per passport application. Pursuant to the authority granted to the Secretary of State under the Passport Services Enhancement Act of 2005, this rule will allow the Department of State to establish, collect, and retain a twenty-dollar surcharge on applicable fees for the filing of each application for a passport, in order to address the resource implications of section 7209(b) of the IRTPA. That surcharge will be embedded in the passport application fee and will be deposited as an offsetting collection to the appropriate Department of State appropriation account. The non-surcharge portion of the passport application fee will be remitted to the general fund of the Treasury. The overall cost of the passport to the public will not increase by virtue of this action.

The Department of State considers the enactment of this rule as a matter of urgency to help provide the funds to meet the demand created by the legislation for universal international traveler nationality and identity documentation. The Department is in the process of increasing its overall production capacity, improving efficiency of production and adjudication processes, as well as enhancing anti-fraud measures. The Department is also currently developing a less expensive card format passport for use at land border crossings.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim final rule, with a 30-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Publishing the rule in this way, with a post-promulgation opportunity for comment, will allow the Department of State to make the rule effective at the earliest opportunity. Allowing a full 30-day comment period followed by a publication of the final rule with a further 30 days before its effective date is not practicable or in the public interest. That process would delay retention by the Department of State of the increased surcharge, urgently needed in order to cover the increased costs attendant to implementing the provisions of the Intelligence Reform and Terrorism Prevention Act of 2004 on travel to the United States. That law, passed in the aftermath of the September 11, 2001 terrorist attacks, seeks to increase the national security of the United States by requiring all arrivals (both foreign nationals and U.S. citizen), even from countries where it was previously not required, to possess a suitably secure travel document. By expedited retention of the surcharge through an interim final rule, the Department of State will be able to fund the costs of increased passport demand and the production of a new, convenient card format passport to be introduced in fiscal year 2008.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule does not result in any such expenditure nor will it significantly or uniquely affect small governments. Therefore, no actions were deemed necessary.

Executive Order 13132: Federalism

The Department of State finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this interim final rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Office of Management and Budget (OMB) has determined that this rule has important policy implications and is significant. This rule has been provided to OMB for review.

Executive Order 12988: Civil Justice Reform

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

The Paperwork Reduction Act of 1995

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and Visas.

■ Accordingly, for the reason set forth above, 22 CFR part 51 is amended as follows:

PART 51—PASSPORTS

■ 1. The authority citation for part 51 is continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 et seq.; Pub. L. 109–167, 119 Stat. 3578; Pub. L. 108–447, 118 Stat. 2809 et seq.; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. Section 51.61(b) is amended to read as follows:

§ 51.61 Passport fees.

* * * * *

(b) A surcharge of twenty dollars on the filing of each application for a passport in order to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1165 note). The surcharge will be recovered by the Department of State from within the passport fee reflected in Schedule of Consular Fees.

* * * * *

Dated: August 10, 2007.

Henrietta Fore,

Under Secretary for Management, Department of State.

[FR Doc. E7–16177 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–06–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable In Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2007. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective September 1, 2007.

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 regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during September 2007, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2007, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2007.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.53 percent for the first 20 years following the valuation date and 5.20 percent thereafter. These interest assumptions represent an increase (from those in effect for August 2007) of 0.04 percent for the first 20 years following the valuation date and 0.04 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease of 0.25 percent in the immediate rate from those in effect for August 2007 and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2007, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are 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. In appendix B to part 4022, Rate Set 167, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
167	9–1–07	10–1–07	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 167, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
167	9–1–07	10–1–07	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

■ 5. In appendix B to part 4044, a new entry for September 2007, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of it are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	*
September 2007	.0553	1–20	.0520	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of August 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–15986 Filed 8–14–07; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05–07–059]

RIN 1625–AA08

Special Local Regulation for Marine Event, Bogue Sound, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "Crystal Coast Super Boat Grand Prix", a power boat race to be held on the waters of Bogue Banks adjacent to Morehead City, NC. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Morehead City Turning Basin including sections of the Intra-Coastal Waterways and Morehead City Channel during the power boat race.

DATES: This rule is effective from 9 a.m. to 5 p.m. on September 23, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–07–059 and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, Room 415, 431 Crawford Street, Portsmouth, Virginia 23704 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247–4525 or via e-mail to *Christopher.D.Humphrey@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 13, 2007, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation for Marine Event, Bogue Sound, Morehead City, North Carolina in the **Federal Register** (72 FR 32567). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On September 23, 2007, the Super Boat International Productions Inc. will sponsor the "Crystal Coast Super Boat Grand Prix", on the waters of Bogue Sound including the Morehead City Turning Basin, sections of the Intra-Coastal Waterway, and Morehead City Channel at Morehead City, North Carolina. The event will consist of approximately 35 power boats participating in two high-speed competitive races, traveling counter-clockwise around a race course. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register.** Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Bogue Sound, Morehead City, NC.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting a portion of Morehead City State Port Turning Basin, sections of the Intra-Coastal Waterway and Morehead City Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast, local radio stations, and area newspapers so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of

vessels intending to transit this section of Bogue Sound including the Morehead City Turning Basin, Atlantic Intra-Coastal Waterway and Morehead City Channel from 9 a.m. to 5 p.m. on September 23, 2007. This proposed rule would not have a significant economic impact on substantial number of small entities for the following reasons. Although the regulated area will apply to the Morehead City Channel, Morehead City Turning Basin and a two-mile segment of the Atlantic Intra-Coastal Waterway, south and west of the Highway 70 Bridge, from approximately mile 204 of the Atlantic Intra-Coastal Waterway to mile 206, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. The Patrol Commander will allow non-participating vessels to transit the event area between races. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–059 to read as follows:

§ 100.35–T05–059 Bogue Sound, Morehead City, North Carolina.

(a) *Regulated area.* The regulated area is established for the waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N longitude 076°42′48″ W, thence westerly to Morehead City Channel Daybeacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Daybeacon 2 (LLNR 38720), thence southeasterly to Money Island Daybeacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Daybeacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant includes* all vessels participating in the "Crystal Coast Super Boat Grand Prix" under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(iv) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 5 p.m. on September 23, 2007.

Dated: August 6, 2007.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. E7–15925 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05–07–075]

Special Local Regulations for Marine Events; Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations during the "Wilmington YMCA Triathlon" swim to be held September 29, 2007, on the waters of Wrightsville Channel, Wrightsville Beach, North Carolina. This action is necessary to provide for the safety of life on navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and vessels transiting the event area.

DATES: The regulations in 33 CFR 100.513 will be enforced from 6:30 a.m. through 9 a.m. on September 29, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Humphrey, Coast Guard Sector North Carolina, Prevention Department, at (252) 247–4525 or e-mail at *Christopher.D.Humphrey@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations for the 29th Annual YMCA Triathlon held on the waters of the Wrightsville Channel in 33 CFR 100.513 from 6:30 a.m. until 9 a.m. on September 29, 2007.

Annually, the YMCA in Wilmington, North Carolina sponsors this event. The marine event consists of approximately 1200 swimmers competing along a course within the regulated area. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and support vessels. In order to ensure the safety of the event participants and transiting vessels, 33 CFR 100.513 will be in effect for the duration of the event. Under provisions of 33 CFR 100.513, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. The Coast Guard may be assisted by other State or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.513 and 5 U.S.C. 552(a). In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 6, 2007.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–15956 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05–07–069]

Special Local Regulations for Marine Events; Susquehanna River, Port Deposit, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce special local regulations during the "Ragin' on the River" power boat race to be held Labor Day weekend, September 1 and 2, 2007, on the waters of the Susquehanna River, adjacent to Port Deposit, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and vessels transiting the event area.

DATES: The regulations in 33 CFR 100.535 will be enforced from 10:30 a.m. on September 1, 2007 through 6:30 p.m. on September 2, 2007. If the event is postponed due to inclement weather this section will be enforced from 10:30 a.m. to 6:30 p.m. on Monday, September 3, 2007.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Coast Guard Sector Baltimore, Prevention Department, at (410) 576–2674 or e-mail at *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations for the annual "Ragin' on the River" power boat race held on the waters of the Susquehanna River in 33 CFR 100.535 from 10:30 a.m. on September 1, 2007 through 6:30 p.m. on September 2, 2007. If the event is postponed due to inclement weather this section will be enforced from 10:30 a.m. to 6:30 p.m. on Monday, September 3, 2007.

Annually, during Labor Day weekend, the Port Deposit, Maryland Chamber of Commerce sponsors this event. The marine event consists of approximately 60 inboard hydroplanes and runabouts racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. In order to ensure the safety of the event participants and transiting vessels, 33 CFR 100.535 will be in effect for the duration of the event. Under provisions of 33 CFR 100.535, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. The Coast Guard may be assisted by other State or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.535 and 5 U.S.C. 552(a). In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 6, 2007.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–15971 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD09–07–110]

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during August 2007 through January 2008. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

DATES: Effective from 9:30 p.m. on August 8, 2007 to 8:30 p.m. on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR 165.931 for the following events:

(1) *Navy Pier Sunday Fireworks;* on September 2, 2007 from 9:30 p.m. through 11 p.m.

(2) *Navy Pier Monday Fireworks;* on December 31, 2007 from 7 p.m. through 8:30 p.m.; January 1, 2008 from 12 a.m. through 1 a.m.

(3) *Navy Pier Tuesday Fireworks;* on January 1, 2008 from 7 p.m. through 8:30 p.m.

(4) *Navy Pier Wednesday Fireworks;* on August 8, 2007 from 9:30 p.m. through 11 p.m.; on August 15, 2007 from 9:30 p.m. through 11 p.m.; on August 22, 2007 from 9:30 p.m. through 11 p.m.; on August 29, 2007 from 9:30 p.m. through 11 p.m.

(5) *Navy Pier Friday Fireworks;* on October 5, 2007 from 9:30 p.m. through 11 p.m.; on October 12, 2007 from 9:30 p.m. through 11 p.m.; on October 19, 2007 from 9:30 p.m. through 11 p.m.; on October 26, 2007 from 9:30 p.m. through 11 p.m.

(6) *Navy Pier Saturday Fireworks;* on August 11, 2007 from 10 p.m. through 11:30 p.m.; on August 18, 2007 from 10 p.m. through 11:30 p.m.; on August 25, 2007 from 10 p.m. through 11:30 p.m.; on September 1, 2007 from 10 p.m. through 11:30 p.m.; on November 24, 2007 5 p.m. through 7 p.m.

All vessels must obtain permission from the Captain of the Port or his on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL. (published on June 13, 2007 at 72 FR 32520) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: August 6, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–16016 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD09–07–069]

Safety Zone; Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the Milwaukee Harbor Safety Zone in

Milwaukee Harbor during August through September 2007. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

DATES: Effective from 10 p.m. on August 19, 2007 to 11 p.m. on September 8, 2007.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone, Milwaukee Harbor, Milwaukee, WI, 33 CFR 165.935 for the following events:

(1) *Irish Fest fireworks display* on August 19, 2007 from 10 p.m. through 11 p.m.; and

(2) *Mexican Fiesta fireworks display* on August 24, 2007 from 9 p.m. through 11 p.m.; and

(3) *Indian Summer fireworks displays* on September 8, 2007 from 9 p.m. through 11 p.m.

All vessels must obtain permission from the Captain of the Port or his on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI (published on June 13, 2007 at 72 FR 32522) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: August 6, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–16018 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–1026; FRL–8141–8]

Pyrasulfotole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyrasulfotole in or on small cereal grains, including barley, oats, rye, triticale, and wheat; as well as livestock commodities. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 15, 2007. Objections and requests for hearings must be received on or before October 15, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–1026. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also

request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–1026 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before October 15, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–1026, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of February 7, 2007 (72 FR 5706) (FRL–8111–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7059) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.631 be amended by establishing a tolerance for residues of the herbicide pyrasulfotole (5-hydroxy-1,3-dimethyl-1*H*-pyrazol-4-yl)[2-(methylsulfonyl)-4-(trifluoromethyl)phenyl]methanone, and its metabolite, 5-hydroxy-3-methyl-1*H*-pyrazol-4-yl) [2-methylsulfornyl)-4-(trifluoromethyl)phenyl]methanone, in or on barley, oat, rye, triticale, wheat, grain at 0.07 parts per million (ppm), barley, oat, rye, wheat, straw and oat, rye, wheat, forage at 0.25 ppm, barley, oat, wheat, hay at 0.8 ppm, wheat, aspirated grain fractions at 1.4 ppm. In addition, Bayer CropScience has requested permanent tolerances for pyrsulfotole *per se* for cattle, goat, hog, horse, sheep, meat and fat at 0.01 ppm, cattle, goat, hog, horse, sheep, meat byproducts at 0.3 ppm, and milk at 0.005 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the tolerance levels as follows: aspirated grain fractions at 0.40 ppm, barley, grain at 0.02 ppm, barley, hay at 0.30 ppm, barley, straw at 0.20 ppm, cattle, fat at 0.02 ppm, cattle, liver at 0.35 ppm, cattle, meat at 0.02 ppm, cattle, meat byproducts, except liver at 0.06 ppm, eggs at 0.02 ppm, goat, fat at 0.02 ppm, goat meat at 0.02 ppm, goat, meat byproducts, except liver at 0.06 ppm, hog, fat at 0.02 ppm, hog, meat at 0.02 ppm, hog, meat byproducts at 0.02 ppm, horse, fat at 0.02 ppm, horse, liver at 0.35 ppm, horse, meat at 0.02 ppm, horse, meat byproducts, except liver at 0.06 ppm, milk at 0.01 ppm, oat, forage at 0.10 ppm, oat, grain at 0.08 ppm, oat, hay at 0.50 ppm, oat, straw at 0.20 ppm, poultry, fat at 0.02 ppm, poultry, meat at 0.02 ppm, poultry, meat byproducts at 0.02 ppm, rye, forage at 0.20 ppm, rye, grain at 0.02 ppm, rye, straw at 0.20 ppm, sheep, fat at 0.02 ppm, sheep, liver at 0.35 ppm, sheep, meat at 0.02 ppm, sheep, meat byproducts, except liver at 0.06 ppm, wheat, forage at 0.20 ppm, wheat, grain at 0.02 ppm, wheat, hay at 0.80 ppm, and wheat, straw at 0.20 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of pyrasulfotole and pyrasulfotole-desmethyl on aspirated grain fractions at 0.40 ppm, barley, grain at 0.02 ppm, barley, hay at 0.30 ppm, barley, straw at 0.20 ppm, cattle, fat at 0.02 ppm, cattle, liver at 0.35 ppm, cattle, meat at 0.02 ppm, cattle, meat byproducts, except liver at 0.06 ppm, eggs at 0.02 ppm, goat, fat at 0.02 ppm, goat meat at 0.02 ppm, goat, meat byproducts, except liver at 0.06 ppm, hog, fat at 0.02 ppm, hog, meat at 0.02 ppm, hog, meat byproducts at 0.02 ppm, horse, fat at 0.02 ppm, horse, liver at 0.35 ppm, horse, meat at 0.02 ppm, horse, meat byproducts, except liver at 0.06 ppm, milk at 0.01 ppm, oat, forage at 0.10 ppm, oat, grain at 0.08 ppm, oat, hay at 0.50 ppm, oat, straw at 0.20 ppm, poultry, fat at 0.02 ppm, poultry, meat at 0.02 ppm, poultry, meat byproducts at 0.02 ppm, rye, forage at 0.20 ppm, rye, grain at 0.02 ppm, rye, straw at 0.20 ppm, sheep, fat at 0.02 ppm, sheep, liver at 0.35 ppm, sheep, meat at 0.02 ppm, sheep, meat byproducts, except liver at 0.06 ppm, wheat, forage at 0.20 ppm, wheat, grain at 0.02 ppm, wheat, hay at 0.80 ppm, and wheat, straw at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

For pyrasulfotole, aggregate exposure risk assessments were performed for the following scenarios: Acute aggregate exposure (food and drinking water), and chronic aggregate exposure (food and drinking water). Short- and intermediate-term assessments, which are used to evaluate aggregate dietary and residential exposures, were not performed because there are no registered or proposed residential non-food uses. Although pyrasulfotole is classified as "Suggestive Evidence of Carcinogenicity," EPA determined that separate quantifications of cancer risks is not required noting that the progression of non-neoplastic related lesions in both the rats and mice was biologically plausible by non-genotoxic

modes of action for both the corneal tumors and the bladder tumors. Therefore, the chronic RfD will be protective of cancer and non-cancer effects.

Pyrasulfotole belongs to a class of herbicides that inhibit the liver enzyme 4-hydroxyphenylpyruvate dioxygenase (HPPD), which is involved in the catabolism (metabolic breakdown) of tyrosine (an amino acid derived from proteins in the diet). Inhibition of HPPD can result in elevated tyrosine levels in the blood, a condition called tyrosinemia. HPPD-inhibiting herbicides have been found to cause a number of toxicities in laboratory animal studies including ocular, developmental, liver, and kidney effects. Of these toxicities, it is the ocular effect (corneal opacity) that is highly correlated with the elevated blood tyrosine levels. In fact, rats dosed with tyrosine alone show ocular opacities similar to those seen with HPPD inhibitors. Although the other toxicities may be associated with chemically-induced tyrosinemia, other mechanisms may also be involved.

There are marked differences among species in the ocular toxicity associated with inhibition of HPPD. Ocular effects following treatment with HPPD inhibitor herbicides are seen in the rat but not in the mouse. Monkeys also seem to be recalcitrant to the ocular toxicity induced by HPPD inhibition. The explanation of this species-specific response in ocular opacity is related to the species differences in the clearance of tyrosine. A metabolic pathway exists to remove tyrosine from the blood that involves a liver enzyme called tyrosine aminotransferase (TAT). In contrast to rats where ocular toxicity is observed following exposure to HPPD-inhibiting herbicides, mice and human are unlikely to achieve the levels of plasma tyrosine necessary to produce ocular opacities because the activity of TAT in these species is much greater compared to rats. Thus, humans and mice have a highly effective metabolic process for handling excess tyrosine.

HPPD inhibitors (e.g., Nitisinone) are used as an effective therapeutic agent to treat patients suffering from rare genetic diseases of tyrosine catabolism. Treatment starts in childhood but is often sustained throughout patient's lifetime. The human experience indicates that a therapeutic dose (1 mg/kg/day dose) of Nitisinone has an excellent safety record in infants, children, and adults and that serious adverse health outcomes have not been observed in a population followed for approximately a decade. Rarely, ocular effects are seen in patients with high plasma tyrosine levels; however these effects are transient and can be readily reversed upon adherence to a restricted protein diet. This indicates that an HPPD inhibitor in it of itself cannot easily overwhelm the tyrosine-clearance mechanism in humans.

Therefore, exposure to environmental residues of HPPD-inhibiting herbicides are unlikely to result in the high blood levels of tyrosine and ocular toxicity in humans due to an efficient metabolic process to handle excess tyrosine. Nonetheless, because EPA has not yet developed an alternate risk assessment endpoint, model, or cross-species extrapolation method for pyrasulfotole, EPA has assessed chronic risk from exposure to pyrasulfotole based on its ocular effects in rats. Due to the limited relevance to humans of this endpoint, this approach to assessing chronic risk for pyrasulfotole must be regarded as worst case. In the future, assessment of HPPD-inhibiting herbicides will consider more appropriate models and cross species extrapolation methods.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by pyrasulfotole as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document, entitled "Pyrasulfotole: Human Health Risk Assessment for Proposed Uses on Small Cereal Grains," is available in the docket established by this action, (EPA–HQ–OPP–2006–1026).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for pyrasulfotole used for human risk assessment is shown in Table 1. of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRASULFOTOLE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment	Uncertainty/FQPA Safety Factors[1]	Study and Toxicological Effects
Acute Dietary (All populations)	NOAEL = 3.8 mg/kg/day	UF_A = 10X UF_H = 10X UF_{FQPA} = 1X	Developmental neurotoxicity (rat; dietary) offspring LOAEL = 37 mg/kg/day based on delayed preputial separation (males), decreased cerebrum length (PND 21 females), and decreased cerebellum height (PND 21 males)
Chronic Dietary (All populations)	NOAEL= 1.0 mg/kg/day	UF_A = 10X UF_H = 10X UF_{FQPA} = 1X	Combined chronic toxicity/carcinogenicity (rat; dietary) LOAEL = 10/14 mg/kg/day (M/F) based on corneal opacity, neovascularization of the cornea, inflammation of the cornea, regenerative corneal hyperplasia, corneal atrophy, and /or retinal atrophy (both sexes), and hepatocellar hypertrophy along with increased serum cholesterol (males)
Incidental Oral Short-and Intermediate-Term (1–30 days and 1–6 months)	NOAEL= 2.5 mg/kg/day	UF_A = 10X UF_H = 10X UF_{FQPA} = 1X	Reproduction and fertility effects (rat; dietary) offspring LOAEL = 26.3/32.6 mg/kg bw/day (M/F) based on corneal opacity and/or corneal neovascularization (F_1 and F_2 generations)
Dermal Short- and Intermediate-Term (1–30 days and 1–6 months)	NOAEL = 10 mg/kg/day	UF_A = 10X UF_H = 10X	28–day dermal toxicity (rat) LOAEL = 100 mg/kg bw/day (M/F) based on focal degeneration of pancreas (both sexes) and alteration of thyroid colloid (males)
Dermal Long-Term (> 6 months)	NOAEL= 1.0 mg/kg/day Estimated dermal absorption factor = 2.5%	UF_A = 10X UF_H = 10X	Combined chronic toxicity/carcinogenicity (rat; dietary) LOAEL = 10/14 mg/kg/day (M/F) based on corneal opacity, neovascularization of the cornea, inflammation of the cornea, regenerative corneal hyperplasia, corneal atrophy, and/or retinal atrophy (both sexes), and hepatocellular hypertrophy along with increased serum cholesterol (males)
Inhalation (All durations)	NOAEL = 1.0 mg/kg/day 100% inhalation asumed	UF_A = 10X UF_H = 10X	Combined chronic toxicity/carcinogenicity (rat; dietary) LOAEL = 10/14 mg/kg/day (M/F) based on corneal opacity, neovascularization of the cornea, inflammation of the cornea, regenerative corneal hyperplasia, corneal atrophy, and/ or retinal atrophy (both sexes), and hepatocellular hypertrophy along with increased serum cholesterol (males)
Cancer (Oral, dermal, inhalation)	Classification: "Suggestive Evidence of Carcinogenic Potential" based on increased incidences of corneal tumors in male rats (oral carcinogenicity study) and urinary bladder tumors in male and female mice (oral carcinogenicity study)		

[1]UF = Uncertainty factor, UF_A = Extrapolation from animal to human (interspecies), UF_H = Potential variation in sensitivity among members of the human population (intraspecies), and UF_{FQPA} = Food Quality Protection Act (FQPA) safety factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyrasulfotole, EPA assessed dietary exposures from pyrasulfotole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA relied upon tolerance-level residues and assuming 100% crop treated information for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA relied upon tolerance-level residues and assuming 100% crop treated information for all commodities.

iii. *Cancer.* Pyrasulfotole has been classified by the EPA as having "Suggestive Evidence of Carcinogenic Potential," based on increased incidences of corneal tumors in male rats at the highest dose tested (2,500 ppm) in the chronic toxicity/

carcinogenicity study in rat and urinary bladder transitional cell tumors in male and female mice at the highest dose tested (4,000 ppm) in the mouse carcinogenicity study. These tumors were observed at doses that were considered excessive due to increased mortality caused by urinary bladder stones. EPA noted that the progression of non-neoplastic related lesions in both the rats and mice was biologically plausible by non-genotoxic modes of action for both the corneal tumors and the bladder tumors. Therefore, the chronic RfD of 0.01 mg/kg/day, based on the rat chronic toxicity/carcinogenicity study (NOAEL= 25 ppm (1 mg/kg/day) and LOAEL of 250 ppm (10 mg/kg/day)) would be protective of both non-cancer and potential cancer precursor effects. Quantifications of separate cancer risk was not required.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for pyrasulfotole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of pyrasulfotole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FIRST and SCI-GROW models, the estimated drinking water environmental concentrations (EDWCs) of pyrasulfotole for acute exposures are estimated to be 4.0 parts per billion (ppb) for surface water and 1.4 ppb for ground water. The EECs for chronic exposures are estimated to be 2.8 ppb for surface water and 1.4 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 4.0 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 2.8 ppb was used to access the contribution to drinking water.

The pyrasulfotole risk assessment team determined that the residue of concern in drinking water for risk assessment purposes is parent only. Pyrasulfotole-benzoic acid was identified as the only environmental degradate in the soil metabolism and terrestrial field dissipation studies. Based on available toxicology studies on pyrasulfotole-benzoic acid, EPA determined that it is not of toxicological concern, and thus, should not be included in the drinking water assessment for pyrasulfotole.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyrasulfotole is not proposed or registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Pyrasulfotole belongs to a class of herbicides (including mesotrione, isoxaflutole, and topramezone) that inhibit the liver enzyme 4-hydroxyphenylpyruvate dioxygenase (HPPD). EPA has concluded that the ocular effects caused by these herbicides has limited relevance to humans. In the future, assessments of HPPD-inhibiting herbicides will consider more appropriate models and cross species extrapolation methods.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional (10X) tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Increased quantitative susceptibility of offspring was observed in the rabbit developmental toxicity study, since offspring toxicity (skeletal anomalies/variations) was observed at a lower dose than maternal toxicity (decreased body weight gain, food consumption). No evidence of quantitative susceptibility following *in utero* and/or postnatal exposure was observed in the prenatal developmental toxicity study in rats, the developmental neurotoxicity (DNT) study in rats, or in the 2-generation rat reproductive toxicity study. Offspring toxicity (skeletal variations; decreased body weight (males)) was observed at the same dose as maternal toxicity (clinical signs, decreased body weight, enlarged placenta) in the prenatal developmental toxicity study in rats. Offspring toxicity (e.g., ocular toxicity, effects on learning/memory, effects on brain morphometry) was also observed at the same dose as maternal toxicity (ocular opacity) in the DNT study. Last, offspring toxicity (ocular toxicity) was observed at the same as or higher doses than parental toxicity (thyroid effects) in the 2-generation rat reproductive toxicity study.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicology database is complete.

ii. There are no residual uncertainties concerning pre- and postnatal toxicity. Clear NOAELs were established for all exposure scenarios and these are considered protective of the offspring susceptibility observed in the rabbit developmental toxicity study. The concern for increased susceptibility seen in rabbit developmental toxicity study is low because a) there is well established developmental NOAEL in the rabbit developmental toxicity study in rabbits protecting fetuses from skeletal anomalies/variations, b) the increased succeptibility was not seen in rat developmental toxicity study, developmental neurotoxicity study in rats and two generation reproduction study in rats, c) the NOAEL of the study chosen for the chronic RfD is 10x lower than the rabbit developmental toxicity study NOAEL (10 mg/kg/day).

iii. There are no registered or proposed uses of pyrasulfotole which would result in residential exposure.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated and tolerance-level residues for

all proposed commodities. By using this screening-level assessment, the acute and chronic exposures/risks will not be underestimated. The dietary drinking water assessment (unrefined estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyrasulfotole and pyrasulfotole-desmethyl will occupy 2% of the aPAD for the general U.S. population and at 4% of the aPAD for children 1–2 years old, the most highly exposed population subgroup.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyrasulfotole and pyrasulfotole-desmethyl from food and water will utilize 2% of the cPAD for the general U.S. population and at 7% of the cPAD for children 1–2 years old, the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyrasulfotole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyrasulfotole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Pyrasulfotole has been classified by EPA as having "Suggestive Evidence of Carcinogenic Potential," based on increased incidences of corneal tumors in male rats at the highest dose tested (2,500 ppm) in the chronic toxicity/carcinogenicity study in rat and urinary bladder transitional cell tumors in male and female mice at the highest dose tested (4,000 ppm) in the mouse carcinogenicity study. The chronic RfD of 0.01 mg/kg/day, based on the rat chronic toxicity/carcinogenicity study (NOAEL = 25 ppm (1 mg/kg/day) and LOAEL of 250 ppm (10 mg/kg/day)) would be protective of both non-cancer and cancer effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyrasulfotole and pyrasulfotole-desmethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology high-performance liquid chromatography (HPLC)/mass spectrometry (MS)/MS method (Method AI–004–A05–01) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no established Mexican, Canadian, or Codex MRLs for the proposed uses. Pyrasulfotole was evaluated as part of a trilateral joint review with Canada and Australia. All EPA-recommended tolerances are the same as those being established in Canada and Australia. Therefore, harmonization is not an issue at this time.

V. Conclusion

Therefore, the tolerance is established for residues of pyrasulfotole and pyrasulfotole-desmethyl, (5-hydroxy-1,3-dimethyl-1*H*-pyrazol-4-yl)[2-(methylsulfonyl)-4-(trifluoromethyl)phenyl]methanone, and its metabolite, 5-hydroxy-3-methyl-1*H*-pyrazol-4-yl) [2-methylsulfornyl)-4-(trifluoromethyl)phenyl]methanone, in or on aspirated grain fractions at 0.40 ppm, barley, grain at 0.02 ppm, barley, hay at 0.30 ppm, barley, straw at 0.20 ppm, cattle, fat at 0.02 ppm, cattle, liver at 0.35 ppm, cattle, meat at 0.02 ppm, cattle, meat byproducts, except liver at 0.06 ppm, eggs at 0.02 ppm, goat, fat at 0.02 ppm, goat meat at 0.02 ppm, goat, meat byproducts, except liver at 0.06 ppm, hog, fat at 0.02 ppm, hog, meat at 0.02 ppm, hog, meat byproducts at 0.02 ppm, horse, fat at 0.02 ppm, horse, liver at 0.35 ppm, horse, meat at 0.02 ppm, horse, meat byproducts, except liver at 0.06 ppm, milk at 0.01 ppm, oat, forage at 0.10 ppm, oat, grain at 0.08 ppm, oat, hay at 0.50 ppm, oat, straw at 0.20 ppm, poultry, fat at 0.02 ppm, poultry, meat at 0.02 ppm, poultry, meat byproducts at 0.02 ppm, rye, forage at 0.20 ppm, rye, grain at 0.02 ppm, rye, straw at 0.20 ppm, sheep, fat at 0.02 ppm, sheep, liver at 0.35 ppm, sheep, meat at 0.02 ppm, sheep, meat byproducts, except liver at 0.06 ppm, wheat, forage at 0.20 ppm, wheat, grain at 0.02 ppm, wheat, hay at 0.80 ppm, and wheat, straw at 0.20 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 1, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.631 is added to read as follows:

§ 180.631 Pyrasulfotole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide pyrasulfotole and pyrasulfotole-desmethyl, (5-hydroxy-1,3-dimethyl-1*H*-pyrazol-4-yl)[2-(methylsulfonyl)-4-(trifluoromethyl)phenyl]methanone, and its metabolite, 5-hydroxy-3-methyl-1*H*-pyrazol-4-yl) [2-methylsulfornyl)-4-(trifluoromethyl)phenyl]methanone, in or on the following agricultural commodities:

Commodity	Parts per million
Aspirated grain fractions	0.40
Barley, grain	0.02
Barley, hay	0.30
Barley, straw	0.20
Cattle, fat	0.02
Cattle, liver	0.35
Cattle, meat	0.02
Cattle, meat byproducts, except liver	0.06
Eggs	0.02
Goat, fat	0.02
Goat, liver	0.35
Goat, meat	0.02
Goat, meat byproducts, except liver	0.06
Hog, fat	0.02
Hog, meat	0.02
Hog, meat byproducts	0.02
Horse, fat	0.02
Horse, liver	0.35
Horse, meat	0.02
Horse, meat byproducts, except liver	0.06
Milk	0.01
Oat, forage	0.10
Oat, grain	0.08
Oat, hay	0.50
Oat, straw	0.20
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, meat byproducts	0.02
Rye, forage	0.20
Rye, grain	0.02
Rye, straw	0.20
Sheep, fat	0.02
Sheep, liver	0.35
Sheep, meat	0.02
Sheep, meat byproducts, except liver	0.06
Wheat, forage	0.20
Wheat, grain	0.02
Wheat, hay	0.80
Wheat, straw	0.20

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E7–15698 Filed 8–14–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0329; FRL–8137–9]

Zucchini Yellow Mosaic Virus-Weak Strain; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the zucchini yellow mosaic virus-weak strain (ZYMV-WK) on cucurbits, including, cucumbers, cantaloupes, watermelons, muskmelons, winter and summer squash, pumpkins, zucchini and other cucurbits when applied/used as a viruscide to protect curcurbit crop plants against severe strains of zucchini yellow mosaic virus. Bio-Oz Biotechnologies Limited submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ZYMV-WK strain.

DATES: This regulation is effective August 15, 2007. Objections and requests for hearings must be received on or before October 15, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0329. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or,if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Gail Tomimatsu, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8543; e-mail address: *tomimatsu.gail@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0329 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 15, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0329, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 14, 2006 (71 FR 34338) (FRL–8059–8), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6E7050) by Bio-Oz Biotechnologies Ltd., Kibbutz Yad Mordechai, DN Hof Ashkelon 79145, Israel. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of ZYMV-WK strain. This notice included a summary of the petition prepared by the petitioner Bio-Oz Biotechnologies Ltd. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . " Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues " and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the

variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

ZYMV-WK is a potyvirus, a type of plant virus, and potyviruses have no known toxicity or pathogenicity to any organism other than plants. They are unable to infect animals because they lack binding site receptors on cell surfaces common to animal viruses. Potyviruses enter plant cells only through open wounds (i.e., wounds produced by feeding insects, such as aphids, or by mechanical methods) or through cell-to-cell transfer (Frankel-Conrat, *et.al.*, 1988). Nearly all living things are routinely exposed to plant viruses, including potyviruses, through plants and plant products (e.g., foods). Naturally occurring strains of ZYMV are known to infect about 18 plant species, within seven different families (Plant Viruses Online). The intended microbial pesticide, ZYMV-WK is reported as a naturally-occurring, weakened strain of ZYMV, and was first recovered from infected zucchini plants in France (LeCoq *et al.*, 1991). Consequently humans are likely already exposed to ZYMV-WK through the diet. Throughout the available literature, there are no reports of adverse effects in animals resulting from ingestion of, or exposure to these viruses. Although severe viral strains of the ZYMV may replicate in aphids ZYMV-WK, does not replicate in aphids and is transmitted poorly by these insects (LeCoq *et al.*, 1991).

ZYMV-WK strain is a natural plant virus isolate and replicates only in susceptible plant hosts, such as the cucurbitaceae, e.g., zucchini and cantaloupe. This weak strain of ZYMV cucurbitaceae does not cause overt plant disease and appears to stimulate plant defenses against severe strains of ZYMV. In addition, there are no reports of adverse effects in humans that handle and administer the viruses, or of the laboratory animals exposed to this virus developing any nasal, eye, skin, or pulmonary allergic reactions, or any other adverse reactions.

In support of this tolerance exemption, mammalian toxicology requirements were satisfied by publicly available information submitted by Bio-Oz Biotechnologies, Ltd., summarized in the preceding paragraph. Specifically, the information provided supports the lack of toxicity of potyviruses to mammals and humans, plus the fact that only certain plants (and no animals) are susceptible to ZYMV-WK.

1. *Acute oral toxicity/pathogenicity (OPPTS 885.3050).* To satisfy this requirement, the registrant submitted supporting public literature in lieu of a laboratory animal study, which documents that plant viruses, including ZYMV-WK, are found in food ingested by humans and animals. According to the submitted published literature, no known adverse effects or deaths have occurred in any species as a result of dietary exposure. Furthermore, there are "no reports of ill-health, sensitization, pathogenicity or allergenicity" from these plant viruses, to humans or other vertebrates even after use of ZYMV-WK as a pesticide in the EU and Israel. Plant viruses are not known to infect mammalian cells, nor replicate in mammals.

2. *Acute dermal toxicity/pathogenicity (OPPTS 885.3100) and primary dermal irritation (OPPTS harmonized guideline 152–34).* The registrant submitted supporting public literature in lieu of a laboratory animal study to fulfill this requirement, documenting that plant viruses, including ZYMV-WK are ubiquitous in susceptible host plants, and are not known to cause acute dermal toxicity or pathogenicity to mammals. Furthermore, there are "no reports of ill-health, sensitization or allergenicity" from these plant viruses, to humans or other vertebrates even after use of ZYMV-WK as a pesticide in the EU and Israel.

3. *Primary eye irritation (OPPTS harmonized guideline 152–35).* The registrant submitted supporting public literature rather than a study to fulfill this requirement, showing that plant viruses are ubiquitous in plants, and they are not known to cause acute eye irritation or pathogenicity to mammals. Furthermore, routine exposures to ZYMV-WK have not led to any known adverse effects; there are "no reports of ill-health, sensitization or allergenicity" from these plant viruses, to humans or other vertebrates even after use of ZYMV-WK as a pesticide in the EU and Israel.

4. *Acute pulmonary toxicity/pathogenicity (OPPTS 885.3150).* To fulfill this requirement, the registrant submitted supporting public literature in lieu of a laboratory animal study, showing that plant viruses, including ZYMV-WK, are ubiquitous in susceptible host plants, and they are not known to cause acute pulmonary toxicity or pathogenicity to mammals. There are "no reports of ill-health, sensitization or allergenicity" from these plant viruses, to humans or other vertebrates even after use of ZYMV-WK as a pesticide in the EU and Israel.

5. *Acute injection toxicity/pathogenicity (OPPTS 885.3200).* To fulfill this requirement, the registrant submitted supporting public literature in lieu of a laboratory animal study, documenting the following:

i. ZYMV-WK, like all potyviruses may evoke immune responses and produce antibodies if properly injected into laboratory animals such as rabbits, mice, chickens, and guinea pigs without causing adverse effects to the animals, and;

ii. There are no reports of humans that handle and administer ZYMV-WK, or laboratory animals developing adverse reactions to the virus. There are "no reports of ill-health, sensitization or allergenicity" from these plant viruses, to humans or other vertebrates even after use of ZYMV-WK as a pesticide in the EU and Israel.

6. *Hypersensitivity incidents (OPPTS 885.3400).* Workers handling ZYMV-WK on a daily basis since 1986 have not had a single incidence of hypersensitivity. There are no reports of hypersensitivity in humans or other animals due to potyviruses, in the literature.

7. *Cell culture (OPPTS 885.3500).* To satisfy this requirement, the registrant submitted the following information, supported by public literature. Potyviruses such as ZYMV-WK are unable to infect animal cells since the cell surface plays an important role in viral infection of animal cells. During infection, animal viruses interact specifically with receptors on the animal cell surface. Potyviruses lack recognition for animal infectivity receptors and only enter plant cells through open wounds or via cell-to-cell transfer through intercellular connections.

8. *Immune response (OPPTS harmonized guideline 152–38).* To fulfill this requirement, the registrant submitted supporting public literature in lieu of a laboratory animal study, documenting the following: No health effects were noticed when infectious plant viruses, including ZYMV, were repeatedly injected into rabbits over several weeks for polyclonal antibody production.

In summary, ZYMV-WK is ubiquitous in susceptible host plants and is not known to cause toxicity or pathogenicity to mammals. Based on the published literature, in accordance with Tier I toxicology data requirements set forth in 40 CFR 158.740(c), the Tier II and Tier III toxicology data requirements were not triggered in connection with this action.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-

occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Virus-infected food plants have always been a part of the human and domestic animal food supply (Dewan and Pearson, 1995; McKinney, 1929; Provvidenti and Gonsalves, 1984; Palukaitis, 1991; Jones *et al.*, 1934; Beemster and de Bokx, 1987). Most plants may be infected by at least one virus, and components of plant viruses are often found in the produce of crop plants. Even plants that show no disease symptoms are often found to be infected with viruses (Jones *et al.*, 1934; Fulton, 1986). In addition, a common agricultural practice used since the 1920s for protection against viral disease involves intentionally inoculating healthy plants with a mild form of a virus in order to prevent infection by a more virulent form (Fulton, 1986). A great deal of information supports the ubiquitous appearance of plant viruses in foods, and to date there have been no reports of adverse human or animal health effects associated with consumption of plant viruses in food. Furthermore, the proposed section 3 registration and ensuing commercial use is not expected to result in increased exposures of ZYMV-WK to the general population: The intended use of ZYMV-WK is within semi-contained environments and consequently exposures to humans are limited. Even if there were increased exposures to residues of ZYMV-WK as a result of other pesticidal uses, there is a reasonable certainty that no harm will result to human health because of the lack of toxicity or pathogenicity of ZYMV-WK to humans.

2. *Drinking water exposure.* ZYMV-WK is not intended for use in drinking water. However, in the event that ZYMV-WK would reach water consumed by humans, for the reasons enumerated above, the Agency concludes that there is reasonable certainty that no harm will result to humans from such exposures through water because of the lack of toxicity or pathogenicity of ZYMV-WK to humans.

B. Other Non-Occupational Exposure

EPA concludes that dermal or inhalation exposure to the general population as a result of this section 3 registration is not likely to occur, based on the proposed uses in semi-contained environments and limited exposure to young cucurbit crop plants. Moreover, the general population, including infants and children, are exposed to plant viruses daily in food with no known adverse effects ever being reported. Therefore, the Agency concludes that in the unlikely event that there is non-occupational, non-dietary exposure to ZYMV-WK, such exposure would pose no risks to the general population, including infants and children.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that EPA consider available information on the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity when establishing, modifying, or revoking a tolerance. These considerations include the possible cumulative effects on infants and children of such residues and other substances with a common mode of toxicity. Because ZYMV-WK does not have any toxic or pathogenic effects, it cannot share a common mechanism of toxicity with other substances. Therefore, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* For all of the reasons discussed above, there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of ZYMV-WK. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different MOE will be safe for infants and children. MOEs, which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessments either directly, or through the use of a MOE analysis or by using uncertainty factors in calculating a dose level that poses no appreciable risk. As previously indicated in the toxicological profile, humans, including infants and children, have been exposed to plant viruses through food, where they are commonly found, with no known or reported adverse effects. As discussed above, the Agency has concluded that ZYMV-WK is non-toxic to mammals, including infants and children. Because there are no threshold levels of concern to infants, children, and adults when ZYMV-WK is used as labeled, the Agency concludes that the additional MOE is not necessary to protect infants and children.

VII. Other Considerations

A. Endocrine Disruptors

At this time, the Agency is not requiring information on the endocrine effects of this active ingredient, ZYMV-WK. The Agency has considered, among other relevant factors, available information concerning whether the weak plant virus may have an effect in humans similar to an effect produced by a naturally occurring estrogen or other endocrine effects. Plant viruses cannot infect mammals, and there is no known metabolite that acts as an "endocrine disruptor" produced by this virus. Therefore, there is no impact via endocrine-related effects on the Agency's safety findings in this final rule.

B. Analytical Method(s)

Through this action, the Agency is proposing to establish an exemption from the requirement of a tolerance for residues of ZYMV-WK on cucurbit crops for the purposes of a FIFRA section 3 registration. The Agency reached this decision based on the reasons discussed above, including lack of toxicity to mammals, and therefore, concludes that an analytical method for detecting ZYMV-WK is not required for enforcement purposes.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the virus ZYMV-WK.

VIII. REFERENCES

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IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 1, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1279 is added to subpart D to read as follows:

§ 180.1279 Zucchini yellow mosaic virus - weak strain; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance for residues of the ZYMV-WK strain in or on all raw cucurbits when applied/used in accordance with label directions.

[FR Doc. E7–16057 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0220; FRL–8122–3]

Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 51229–78–8); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 51229–78–8) under 40 CFR 180.920 (growing crops) when used as an inert ingredient as a preservative at 0.14% by weight (wt) or less of pesticide formulations. Dow Chemical Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance.

DATES: This regulation is effective August 15, 2007. Objections and requests for hearings must be received on or before October 15, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0220. To access the

electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0220 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 15, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0220, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 17, 2003 (67 FR 70251) (FRL–7336–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP 3E6656) by Dow Chemical Company, Building 1803, Midland, Michigan 48674. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. That notice included a summary of the petition prepared by the petitioner. Dow Chemical Company requested the use of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a preservative at 0.14% by weight or less in pesticide formulations. No comments were received in response to the notice of filing.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

III. Risk Characterization and Conclusion.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity,

completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride are discussed in this unit. EPA has sufficient data to assess the hazards of and make a determination on aggregate exposure for the chemical.The following provides a brief summary of the risk assessment and conclusions for the Agency's review of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. The full decision document for this action is available on EPA's Electronic Docket at *http://www.regulations.gov/* under docket number EPA–HQ–OPP–2007–0220.

A. Human Health

The Agency reviewed the available information on cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride submitted by the petitioner as well as additional information available to EPA and the data evaluated in the 1995 Dowicil®CTAC RED. The toxicity database is sufficient for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. In laboratory animal studies measuring acute toxicity, cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is slightly toxic in acute inhalation and oral toxicity studies. Dermal effects were observed in rabbits at close to the limit dose (no observed adverse effect level of 1,000 milligram/kilogram/day (mg/kg/day)) in a subchronic study, and in a dermal acute toxicity study the LD_{50} was determined to be 923 mg/day. The chemical was mutagenic in the *in vitro* Chinese hamster ovary cell HGPRT (Hypoxanthine guanine phophoribosyl transferase)forward mutation assay with activation, but was nonmutagenic without activation. It was negative in two other mutagenicity studies. Developmental effects were observed at or above the level of maternal toxicity (optic malformations may be linked to genetic issues rather than exposure to the chemical). Chronic toxicity studies are not available, nevertheless, sufficient information is available in sub-chronic and developmental toxicity studies.

B. Exposure Assessment

The potential for exposure to residues of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is adequately characterized based on the chemical's non-persistent nature and ready dissipation in the environment and the low use rate. Exposures from residues in food and drinking water are expected to be minimal. Residential exposure (inhalation and dermal) is also expected to be minimal from the use of the chemical in pesticides considering the low application rate. Residential exposures from non-pesticides uses are not anticipated to be of concern considering the low dermal toxicity findings. The Agency concludes dietary and residential exposures of concern are not anticipated from the inert ingredient use of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride considering its non-persistent nature in the environment, low toxicity, and the limitations imposed on its proposed use under 40 CFR 180.920 as a preservative at 0.14% by weight (wt) or less of the pesticide formulation.

C. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. The toxicity database is sufficient for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride and potential exposure is adequately characterized based on the low use rate. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity.

D. Cumulative Exposure

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride and any other substances, and the chemical does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

E. Other Considerations

1. *Analytical methods.* Adequate enforcement methodology is available to enforce the tolerance exemption expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.* Residues are not expected because of the chemical's ready degradation in the environment and the low amount that will be permitted in the pesticide formulation (limited to 0.14% by weight (wt) or less).

2. *International tolerances.* The Agency is not aware of any country requiring a tolerance for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 51229–78–8) nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

F. Determination of Safety and Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to residues of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. Accordingly, EPA finds that exempting cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride from the requirement of a tolerance will be safe. EPA is establishing a tolerance exemption in 40 CFR 180.920 for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride when it is used as an inert ingredient as a preservative at 0.14% by weight or less in pesticide formulations.

IV. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 3, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.920, is amended by adding alphabetically the inert ingredient to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * *	*	
Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 51229–78–8)	Maximum of 0.14% by weight of formulation	Preservative
* * * * * *	*	

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0545; FRL–8143–1]

Lambda-Cyhalothrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of lambda-cyhalothrin, 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on cucurbit vegetables (Group 9), tuberous and corm vegetables (Subgroup 1C), grass (forage, fodder, and hay) (Group 17), barley, buckwheat, oat, rye, wild rice, and pistachios. Syngenta Crop Protection, Inc. and the Interregional Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 15, 2007. Objections and requests for hearings must be received on or before October 15, 2007, and must be filed in accordance with the

instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0545. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bonaventure Akinlosotu, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0653; e-mail address: *akinlosotu.bonaventure@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0545 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before October 15, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0545, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 14, 2006 (71 FR 19509) (FRL–7771–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6994) by Syngenta Crop Protection, Inc., 410 Swing Rd., Greensboro, NC 27409 and IR–4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.438 be amended by establishing a tolerance for combined residues of the insecticide lambda-cyhalothrin, (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and the epimer of lambda-cyhalothrin, (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on food commodity crop groupings: Cucurbit vegetables (Crop Group 9) at 0.05 parts per million (ppm); grass, forage, fodder, hay (Crop Group 17) at 9.0 ppm; tuberous and corm vegetables (Crop Subgroup 1-C) at 0.01 ppm; barley, buckwheat, oat, rye, grain at 0.05 ppm; barley, bran at 0.2 ppm; oat, rye, forage at 2.0 ppm; barley, oat, hay at 2.0 ppm; barley, oat, rye, straw at 2.0ppm; and wild rice, grain at 1.0 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. No

comments were received on the notice of filing.

The April 14, 2006 notice announcing the pesticide petition from Syngenta Crop Protection, Inc. and IR–4 inadvertently left out the PP number for the IR–4 petition though the commodities IR–4 requested were proposed. There are actually two petitions (PP 3E6593 and PP 5F6994). PP 3E6593 submitted by IR–4 requested that 40 CFR 180.438 be amended by establishing a tolerance for combined residues of the insecticide lambda-cyhalothrin and its epimer in or on food commodities: Barley, buckwheat, oat, rye, grain at 0.05 ppm; barley, bran at 0.2 ppm; oat, rye, forage at 2.0 ppm; barley, oat, hay at 2.0 ppm; barley, oat, rye, straw at 2.0 ppm; and wild rice, grain at 1.0 ppm. PP 5F6994 submitted by Syngenta Crop Protection, Inc., requested that 40 CFR 180.438 be amended by establishing a tolerance for combined residues of the insecticide lambda-cyhalothrin and its epimer in or on food commodity crop groupings: Cucurbit vegetables (Crop Group 9) at 0.05 ppm; grass, forage, fodder, hay (Crop Group 17) at 9.0 ppm; tuberous and corm vegetables (Crop Subgroup 1-C) at 0.01 ppm.

In the **Federal Register** of October 11, 2006 (71 FR 59780) (FRL–8097–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E7077) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.438 be amended by establishing a tolerance for the combined residues of the insecticide lambda-cyhalothrin in or on pistachio at 0.05 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for the combined residues of lambda-cyhalothrin in or on cucurbit vegetables (Crop Group 9) at 0.05 ppm; grass, forage, fodder and hay (Crop Group 17) at 7.0 ppm; tuberous and corm vegetables (Crop Subgroup 1C) at 0.02 ppm; barley, grain at 0.05 ppm; buckwheat, grain at 0.05 ppm; oat, grain at 0.05 ppm; rye, grain at 0.05 ppm; barley, bran at 0.2 ppm; rye, bran at 0.2 ppm; oat, forage at 2.0 ppm; rye, forage at 2.0 ppm; barley, hay at 2.0 ppm; oat, hay at 2.0 ppm; barley, straw at 2.0 ppm; oat, straw at 2.0 ppm; rye, straw at 2.0 ppm; rice, wild, grain at 1.0 ppm; pistachio at 0.05 ppm; hog, fat at 0.2 ppm; hog, meat at 0.01 ppm; hog, meat-byproducts at 0.02 ppm; and milk, fat at 10.0 ppm (reflecting 0.4 ppm in whole milk). EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by lambda-cyhalothrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of April 8, 2004 (69 FR 18480) (FRL–7353–4).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for lambda-cyhalothrin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 8, 2004 (69 FR 18480) (FRL–7353–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to lambda-cyhalothrin, EPA considered exposure under the petitioned-for tolerances as well as all existing lambda-cyhalothrin tolerances in (40 CFR 180.438). EPA assessed dietary exposures from lambda-cyhalothrin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In estimating acute dietary exposure, EPA used the Dietary

Exposure Evaluation Model (DEEM-FCID(TM), Version 2.03) which uses food consumption information from the United States Department of Agriculture's (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). A refined acute probabilistic dietary exposure assessment was performed for lambda-cyhalothrin which included all existing and proposed food uses and drinking water. The acute dietary exposure assessment incorporated processing factors and percent crop treated (PCT) estimates. Acute anticipated residues were derived from USDA's Pesticide Data Program (PDP) monitoring data, field trial studies, and a market basket survey for beef-fat.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used DEEM-FCID(TM), Version 2.03 which uses food consumption information from the USDA's 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a refined chronic dietary exposure assessment for lambda-cyhalothrin to support all existing and proposed food uses, utilizing a single-point estimate of anticipated residues for food and drinking water. The chronic dietary exposure assessment incorporated processing factors and PCT estimates. Chronic anticipated residues were derived from PDP monitoring data, field trial studies, and a market basket survey for beef-fat.

iii. *Cancer.* Lambda-cyhalothrin is classified as "not likely to be carcinogenic to humans." Therefore, there is no cancer risk associated with existing or proposed uses.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

a. The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

b. The exposure estimate does not underestimate exposure for any significant subpopulation group.

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

PCT estimates of agricultural uses for lambda-cyhalothrin were obtained in the form of a screening-level usage assessment (SLUA), based on data years 1999–2004. Average and maximum values for percent crop treated data were used in the chronic and acute analyses, respectively, for the following commodities with established tolerances: Almonds (5 chronic, 5 acute), Apples (5 chronic, 10 acute), Beans, Green (10 chronic, 20 acute), Broccoli (10 chronic, 20 acute), Cabbage (30 chronic, 45 acute), Canola/Rapeseed (1 chronic, 2.5 acute), Cauliflower (20 chronic, 30 acute), Cherries (5 chronic, 15 acute), Corn (1 chronic, 2.5 acute), Cotton (10 chronic, 10 acute), Dry Beans/Peas (1 chronic, 2.5 acute), Garlic (10 chronic, 30 acute), Lettuce (30 chronic, 45 acute), Onions (50 chronic, 55 acute), Peaches (5 chronic, 10 acute), Peanuts (5 chronic, 10 acute), Pears (15 chronic, 30 acute), Peas, Green (1 chronic, 2.5 acute), Pecans (1 chronic, 5 acute), Peppers (5 chronic, 15 acute), Prunes and Plums (5 chronic, 5 acute), Rice (15 chronic, 30 acute), Sorghum (1 chronic, 2.5 acute), Soybeans (5 chronic, 10 acute), Sugarcane (5 chronic, 10 acute), Sunflowers (10 chronic, 20 acute), Sweet Corn (45 chronic, 60 acute), Tomatoes (20 chronic, 20 acute), and Wheat (1 chronic, 2.5 acute). For all other commodities and for new uses, 100% PCT was assumed. Tolerance level values were used for the following commodities: Okra, eggplant, poultry, tree nuts group (crop group 14) except almonds and pecans, and tuberous and corm vegetables subgroup (crop subgroup 1C) except potatoes.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of 5% except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available Federal, State, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of 5%. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

The Agency believes that the three conditions listed in Unit III.C.1.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which lambda-cyhalothrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for lambda-cyhalothrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of lambda-cyhalothrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at

http://www.epa.gov/oppefed1/models/water/index.htm.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentrations in Groundwater (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of lambda-cyhalothrin for acute exposures are estimated to be 5.35 parts per billion (ppb) for surface water and 0.00336 ppb for ground water. The EECs for chronic exposures are estimated to be 0.130 ppb for surface water and 0.00336 ppb for ground water. The EDWCs for lambda-cyhalothrin were calculated based on a maximum application rate of 0.5 pounds active ingredient per acre per season (lb a.i./A/season) for orchards (ground application) for surface and groundwater concentrations. A default percent crop area (PCA) factor of 0.87 (87%) was applied to the orchards scenario. The orchards scenario using the FIRST model produced the highest concentrations.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 5.35 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.130 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Lambda-cyhalothrin is currently registered for the following residential non-dietary sites: Ornamental gardens, lawns, landscapes, turf, golf courses, and general insect control (spot treatments, and crack and crevice treatments) in, around, and on buildings, structures, and immediate surroundings. All registered products, except for one aerosol can product, are limited to use only by certified applicators. As such, this assessment **ADDRESSES** the single-residential handler scenario for aerosol can users, and post-application scenarios associated with any use in a residential environment. Both short-term and intermediate-term exposures are possible.

For the residential assessment, existing uses on turf, in gardens, on golf courses, and for structural pest control were considered, but a quantitative calculation was only completed for post-application exposure on treated turf. The Agency used a conservative screening-level approach to address the risks associated with the use of the aerosol can product of lambda-cyhalothrin that can be purchased and used by homeowners.

A screening-level quantitative calculation was completed for post-application exposure on treated turf only because this scenario is expected to have the highest associated exposures of all residential exposures. EPA believes that the selected post-application assessment on lawns for children is protective for all residential exposures (even the aerosol can handler scenario) because the dose levels for children playing on treated lawns are thought to exceed those expected for all other scenarios (lawn exposures for children represents the worst-case scenario). This approach is based on the following conservative considerations:

i. EPA assumed that children contacted lawns immediately after application of lawn product and thus there was no dissipation of residues from the treated lawn.

ii. EPA estimated dermal exposure based on a high duration of exposure on the lawn and an intensity of activity that results in a high degree of contact with the treated lawn.

iii. EPA assumed that the pesticide was applied at the maximum application rate.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Lambda-cyhalothrin is a member of the pyrethroid class of pesticides. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, EPA is not currently following a cumulative risk approach (based on a common mechanism of toxicity) for the pyrethroids. Although pyrethroids interact with sodium channels, there are multiple types of sodium channels, and it is currently unknown whether pyrethroids have similar effects on all channels. Nor is there a clear understanding of effects on key downstream neuronal function (nerve excitability), nor do we understand how these key events interact to produce their compound specific patterns of neurotoxicity. There is ongoing research by the EPA's Office of Research and Development (and pyrethroid registrants) to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. When available, the Agency will consider this research, and make a determination of common mechanism as a basis for assessing cumulative risk. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *The completeness of the database.* The toxicology database is considered complete for the purposes of an FQPA risk assessment. Based on the developmental studies in rats and rabbits, and the 3–generation and neurodevelopmental studies in rats, there is no evidence of increased susceptibility. The neurotoxicity observed in adult animal studies raised a concern for potential neurodevelopmental effects. A rat developmental neurotoxicity (DNT) study is available. In this study, the lowest dose showing neurotoxicity in the offspring (effects on mortality, body weights, body weight gains, learning, learning and memory, and brain morphometry) is 10 milligram/kilogram body weight/day (mg/kg bw/day), with a NOAEL of 4 mg/kg bw/day. Effects in offspring and adult animals are found at a similar dose based on body weight decreases. It should be noted that some of the parameters evaluated in this DNT study were regarded as acceptable but several others were not, leading to a study classification of "unacceptable." The study deficiencies which, taken together, led to the unacceptable classification include:

i. Statistical analyses that adjusted for body weights after treatment had begun.

ii. An inadequate assessment of motor activity.

iii. An inadequate assessment of auditory startle in postnal day (PND) 61 females.

iv. Missing low- and mid-dose morphometry data.

However, it is not likely that these limitations will impact the risk assessment for the following reasons. The slight changes in brain morphometry were seen at the highest dose tested. Because these changes were slight, it is uncertain whether toxicologically significant differences would be seen at the mid dose, and it is unlikely that significant changes would be seen at the lowest dose tested. The auditory startle response is considered adequate for assessment in PND 23 males/females and PND 61 males where no treatment-related effects were seen in auditory startle response. Only the auditory response data for PND 61 females is inadequate. Motor activity was examined and there did not appear to be any differences between treated and control animals other than decreases for multiple subsessions in PND 18 males/females at the high dose only, but due to the high variability and the lack of habituation, these data are considered equivocal. There was no published literature found that would indicate a neurodevelopmental concern for lambda-cyhalothrin.

The exposure assessments are based on reliable data and reasonable worst-case assumptions, and are not likely to underestimate exposure. Reliable data on anticipated dietary residues was relied upon including crop field trial studies and monitoring data. Conservative ground and surface water modeling estimates were used. Similarly, conservative Residential Standard Operating Procedures were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by lambda-cyhalothrin.

3. *Prenatal and postnatal sensitivity.* No quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental studies was observed. No developmental toxicity was observed in either of these studies. No quantitative or qualitative evidence of increased susceptibility was observed in the 3–generation reproduction study in rats. Offspring toxicity (decreased pup weight and pup weight gain) was observed in the reproduction study at the same dose level as parental toxicity (decreased body weight and body weight gain). These effects are not considered to be more severe than the effects in the parents.

EPA has received a DNT for lambda-cyhalothrin (Master Record Identification Number 46449102), which was classified as unacceptable/guideline due to inadequacies in some of the developmental parameters tested. Nonetheless, for the reasons noted in Unit VII.D.2., EPA does not believe that correction of the deficiencies in this study would meaningfully change its evaluation of the risk posed by lambda-cyhalothrin and is not requiring that the study be repeated. In any event, if a 10-fold factor is applied to this study's NOAEL, (i.e., 4 mg/kg bw/day) to account for the scientific limitations of the study, the resulting value is 0.4 mg/kg bw/day. This estimate of 0.4 mg/kg/day is similar to the doses from the chronic dog study used for risk assessment (i.e., 0.5 mg/kg/day for acute dietary exposure scenarios and 0.1 mg/kg/day for chronic dietary exposure scenarios). Therefore, EPA concludes that using the NOAELs from the dog study would not underestimate risks to infants and children from exposure to lambda-cyhalothrin, and consequently, a repeat rat DNT study is not required.

4. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for lambda-cyhalothrin is considered complete for the purpose of an FQPA assessment.

ii. All doses and endpoints for risk assessment are based on neurotoxic effects seen in the dog, widely known as the most sensitive test species for pyrethroids.

iii. There is no evidence that lambda-cyhalothrin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study. The acceptable parameters of the developmental neurotoxicity study in rats do not indicate increased susceptibility to pups exposed *in utero*.

iv. The exposure assessments are based on reliable data and reasonable worst-case assumptions, and are not likely to underestimate exposure.

Based on all of the considerations in Unit III.D.3., there is not a need to retain the additional 10X safety factor for children. Application of the 10X intraspecies uncertainty factor (which accounts for the possibility that a subpopulation may be 10 times more sensitive than the average individual) and a 10X interspecies factor (which accounts for the possibility that humans may be 10 times more sensitive than animals) to the dog NOAEL (i.e., the most sensitive species) should assure protection of human health including children. Therefore, EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to lambda-cyhalothrin will occupy 46% of the aPAD for the general U.S. population, and 61% of the aPAD for all infants (<1 year old), the most highly exposed population subgroup.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to lambda-cyhalothrin from food and water will utilize 17% of the cPAD for the general U.S. population, and 50% of the cPAD for children (1–2 years old), the most highly exposed population subgroup. Based on the use pattern, chronic residential exposure to residues of lambda-cyhalothrin is not expected.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Lambda-cyhalothrin is currently registered for use that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for lambda-cyhalothrin.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 140 to 490. The residential MOEs were aggregated together because, regardless of the exposure route (dermal, inhalation, or

oral), lambda-cyhalothrin has similar adverse effects (neurotoxicity). This aggregate risk assessment incorporates lawn post-application exposure (the scenario with the highest potential for exposure), and is a day-0 screening-level assessment. The resulting aggregate MOEs were greater than the Agency target MOE of 100 (ranging from 140 to 490), and there were thus no concerns for aggregate exposure.

4. *Aggregate cancer risk for U.S. population.* Lambda-cyhalothrin is classified as "not likely to be carcinogenic to humans." Therefore, there is no aggregate cancer risk associated with the existing or proposed uses.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to lambda-cyhalothrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/electron capture detector (GC/ECD) methods are available for enforcing tolerances for lambda-cyhalothrin residues in plant and animal commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

The Codex Alimentarius Commission, Mexico, and Canada have all established maximum residue limits (MRLs) for residues of lambda-cyhalothrin in or on a variety of raw agricultural commodities. These regulatory bodies express residues in terms of only cyhalothrin (Codex) or of lambda-cyhalothrin (Canada, Mexico); none of these tolerances include the epimer R157836 found in the U.S. tolerance expression. EPA includes the epimer due to it being considered as toxic as the active ingredient and its presence at quantifiable levels in many crops. For the crop uses currently under consideration, only potatoes have existing international tolerances. Although the recommended 0.02 ppm U.S. tolerance agrees numerically with the Codex and Mexican MRLs, strictly speaking they are not in harmony due to the different residue definitions.

C. Response to Comments

Several comments were received from a private citizen objecting to IR–4 petitioning for tolerances, pesticide residues on food and the establishment of these tolerances. The Agency has received similar comments from this commenter on numerous previous occasions. Refer to the **Federal Registers** of June 30, 2005 (70 FR 37686) (FRL–7718–3), January 7, 2005 (70 FR 1354) (FRL–7691–4), and October 29, 2004 (69 FR 63096–63098) (FRL–7681–9) for the Agency's response to these objections. In addition, the commenter noted several adverse effects seen in animal toxicology studies with lambda-cyhalothrin and claims because of these effects no tolerance should be approved. EPA has found, however, that there is a reasonable certainty of no harm to humans after considering these toxicological studies and the exposure levels of humans to lambda-cyhalothrin. The commenter also identified potential effects on the environment. This comment is considered irrelevant because the safety standard for approving tolerances under section 408 of FFDCA focuses on potential harms to human health and does not permit consideration of effects on the environment. Effects on the environment were considered by EPA in the registration process for lambda-cyhalothrin under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*

V. Conclusion

Modifications to the pesticide petitions included in this final rule include: Grass, (forage, fodder, hay) from 9.0 ppm to 7.0 ppm because a crop group tolerance is appropriate—grass forage, fodder, and hay (Group 17): rye, bran at 0.2 ppm based on the existing residue data and tolerances in similar wheat commodities; hog, fat from 3.0 ppm to 0.2 ppm, hog, meat from 0.2 ppm to 0.01 ppm, hog, and meat-byproducts from 0.2 ppm to 0.02 ppm based on a Theoretical Dietary Burden (TDB) of 0.9 ppm for swine, the maximum expected residues are 0.16 ppm in hog fat, 0.006 ppm in hog meat, and 0.011 ppm in hog meat-byproducts; and milk, fat from 5.0 ppm to 10.0 ppm based on a TDB of 10.4 ppm for dairy cattle, the maximum expected residues in milk are 0.35 ppm, equivalent to 8.8 ppm in milk fat.

Therefore, the tolerances are established for the combined residues of lambda-cyhalothrin, 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, in or on cucurbit vegetables (Crop Group 9) at 0.05 ppm; grass, forage, fodder and hay (Crop Group 17) at 7.0 ppm; tuberous and corm vegetables (Crop Subgroup 1C) at 0.02 ppm; barley, grain at 0.05 ppm; buckwheat, grain at 0.05 ppm; oat, grain at 0.05 ppm; rye, grain at 0.05 ppm; barley, bran at 0.2 ppm; rye, bran at 0.2 ppm; oat, forage at 2.0 ppm; rye, forage at 2.0 ppm; barley, hay at 2.0 ppm; oat, hay at 2.0 ppm; barley, straw at 2.0 ppm; oat, straw at 2.0 ppm; rye, straw at 2.0 ppm; rice, wild, grain at 1.0 ppm; pistachio at 0.05 ppm; hog, fat at 0.2 ppm; hog, meat at 0.01 ppm; hog, meat-byproducts at 0.02 ppm; and milk, fat at 10.0 ppm (reflecting 0.4 ppm in whole milk).

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 3, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.438 is amended by:

i. Revising the entries "hog, fat;" "hog, meat;" "hog, meat byproducts;" and "milk, fat (reflecting 0.4 ppm in whole milk)" in the table in paragraph (a) (1).

ii. Adding alphabetically the following commodities to the table in paragraph (a)(1) to read as follows:

§180.438 Lambda-cyhalothrin and an isomer gamma-cyhalothrin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Barley, bran	0.2
Barley, grain	0.05
Barley, hay	2.0
Barley, straw	2.0
* * * * *	
Buckwheat, grain	0.05
* * * * *	
Grass, forage, fodder and hay, group 17	7.0
Hog, fat	0.2
Hog, meat	0.01
Hog, meat byproducts	0.02
* * * * *	
Milk, fat (reflecting 0.4 ppm in whole milk)	10.0
* * * * *	
Oat, grain	0.05
Oat, forage	2.0
Oat, hay	2.0
Oat, straw	2.0
* * * * *	
Pistachio	0.05
* * * * *	
Rice, wild, grain	1.0
Rye, bran	0.2
Rye, grain	0.05
Rye, forage	2.0
Rye, straw	2.0
* * * * *	
Vegetable, cucurbit, group 9	0.05
* * * * *	
Vegetable, tuberous and corm, subgroup 1C	0.02
* * * * *	

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8455–5]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Arkansas has applied to the EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Arkansas' changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on October 15, 2007 unless the EPA receives adverse written comment by September 14, 2007. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: patterson.alima@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning

and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means the 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 the EPA without going through 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. You can view and copy Arkansas' application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Arkansas Department of Environmental Quality, 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876, and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 1445 Ross Avenue, Dallas, Texas 75202–2733, and Email address *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Arkansas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Arkansas Final Authorization to operate its hazardous waste program with the changes described in the authorization application. Arkansas has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Arkansas is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if the EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has Arkansas Previously Been Authorized?

Arkansas initially received final authorization on January 25, 1985 (50 FR 1513), to implement its Base Hazardous Waste Management program. Arkansas received authorization for revisions to its program on January 11, 1985 (50 FR 1513), effective January 25, 1985; March 27, 1990 (55 FR 11192), effective May 29, 1990; September 18, 1991 (56 FR 47153), effective November 18, 1991; October 5, 1992 (57 FR 45721), effective December 4, 1992; October 7, 1994 (59 FR 51115), effective December 21, 1994, and April 24, 2002 (67 FR 20038), effective June 24, 2002. The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993 (58 FR 52674). On August 1, 2006, Arkansas submitted a final complete program revision

application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The Arkansas Department of Pollution Control and Ecology (ADPC&E), revised its Regulation Number 23 from one of "incorporation by reference" to the adoption and incorporation of a version of the full text of the Federal regulatory language in April 1994. The specific authorities provided are contained in statutes and regulations lawfully adopted at the time the Independent Counsel signed the certification which are in effect now. The statutory authorities for the State are documented in the Arkansas RCRA Statutory Checklists, dated July 31, 2006. The provisions for which the State is seeking authorization are documented in this **Federal Register** Notice. The official State regulations are found in Arkansas Pollution Control and Ecology Commission Regulations Number 23 (Hazardous Waste Management), adopted on December 9, 2005, and effective on March 23, 2006. All previous authorization applications have not been amended, notified or revised by statute or judicial decision in a way that diminishes and interferes with the authority to carry out the previously authorized hazardous waste program to meet the requirements of Code of Federal Regulations part 271.

The provisions for which the State is seeking authorization are documented in the Rule Revision Checklists 194 through 207, known collectively as RCRA Clusters X through XV which are listed in the chart in this document.

Reference to Arkansas Code Annotate (A.C.A.) of 1987, as amended and effective in August 2005. Reference to Arkansas of Pollution Control and Ecology Commission (APC&EC) Regulations Number 23 (Hazardous Waste Management) (formerly titled the Arkansas Hazardous Waste Management Code), last amended on December 9, 2005, to adopt all final rules promulgated by EPA through June 30, 2005 and which was effective March 23, 2006. Dates of enactment and adoption for other statutes or regulations are given when cited on the Rule Revision Checklists submitted to EPA Region 6.

G. What Changes Are We Approving With Today's Action?

On August 1, 2006, the State of Arkansas submitted a final complete program application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that the State of Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The State of Arkansas revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated from July 1, 1999 to June 30, 2005 (RCRA Clusters X–XV). Arkansas requirements are included in a chart with this document.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
1. Land Disposal Restrictions Phase IV—Technical Correction. (Checklist 183).	64 FR 56469–56472, effective October 20, 1999.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.32, 262.34(a)(4), 268.7(a)(iii), 268.40(j), 268.40/Table, 268.49(c)(1)(A)–(B), as amended December 9, 2005 effective March 23, 2006.
2. Accumulation Time for Waste Water Treatment Sludges. (Checklist 184).	65 FR 12378–12398, effective March 8, 2000.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 262.34(a)4, 262.34(g) intro, 262.34(g)(1), 262.34(g)(2)–(3), 262.34(g)(4), 262.34(g)(4)(i)(A)–(B), 262.34(g)(i)(C) intro, 262.34(g)(C)(1)–(2), 262.34(g)(4)(ii)–(iv), 262.34(g)(4)(v), 262.34(h)–(i) as amended December 9, 2005 effective March 23, 2006.
3. Organobromine Production Waste Vacatur. (Checklist 185).	65 FR 14472–14475, March 17, 2000.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.32(f)/Table, 261 Appendices VII and VIII, 268.33, 268.40/Table; as amended December 9, 2005, effective March 23, 2006.
4. Petroleum Refining Process Waste–Clarification. (Checklist 187).	64 FR 36365–36367, June 8, 2000.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.31(a)/Table, 268 and Appendix VII; as amended December 9, 2005, effective March 23, 2006.
5. Hazardous Air Pollutant Standards; Technical Corrections. (Checklist 188).	65 FR 42292–42302, July 10, 2000.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.38(c)(2)(iv), 264.340(b)(1), 264.340(b)(3), and 270.42(j)(1); as amended December 9, 2005, effective March 23, 2006.
6. Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes. (Checklist 189).	65 FR 67068–67133, November 8, 2000.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.32, 261 Appendices VII and VIII, 268.33(a), 268.33(b) intro, 268.33(b)(1)–(5), 268.33(c)–(d) intro, 268.33(d)(1)–(2), 268.40/Table, and 268.48(a)/Table; as amended December 9, 2005, effective March 23, 2006.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
7. Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil. (Checklist 190).	65 FR 81373–81381, December 26, 2000.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 268.32(a), 268.32(b) intro, 268.32(b)(i)–(ii), 268.32(b)(3), 268.32(b)(4) and 268.48(a)/Table UST; as amended December 9, 2005, effective March 23, 2006.
8. Mixed Waste Rule. (Checklist 191).	66 FR 27218–27266, May 16, 2001.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 266.210 intro, 266.210, 266.220, 266.225, 266.230(a), 266.230(b) intro, 266.230(b)(1)–(5), 266.235, 266.240(a) intro, 266.240(a)(1) intro, 266.240(a)(i)–(iii), 266.240(a)(2), 266.240(b), 266.245(a) intro, 266.245(a)(1), 266.245(a)(2) intro, 266.245(a)(2)(i)–(iv), 266.245(b), 266.250(a) intro, 266.250(a)(1)–(4), 266.250(b), 266.255(a)–(b), 266.260, 266.305, 266.310 intro, 266.310(a)–(b), 266.315 intro, 266.315(a)–(d), 266.320, 266.325, 266.330 intro, 266.330(a)–(d), 266.335, 266, 266.340 intro, 266.340(a)–(c), 266.345(a), 266.345(b) intro, 266.345(b)(1)–(7), 266.350 intro, 266.350(a)–(e), 266.355(a) intro, 266.355(a)(1)(i)–(iii), 266.355(a)(2), 266.355(b), 266.360(a) intro, 266.360(a)(1), 266.360(a)(2) intro, 266.360(a)(2)(i)–(iv) and 266.360(b); as amended December 9, 2005 effective March 23, 2006.
9. Mixture and Derived—From Rules Revisions. (Checklist 192 A).	66 FR 27266–27297, May 16, 2001.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.3(a)(2)(iii), 261.3(a)(2)(iv), 261.3(c)(2)(i), 261.3(g)(1)–(2), 261.3(g)(2)(i)–(ii), 261.3(g)(3), 261.3(h)(1), 261.3(h)(2), 261.3(h)(2), 261.3(h)(2)(i)–(ii), 261.3(h)(3); as amended December 9, 2005 effective March 23, 2006.
10. Land Disposal Restrictions Corrections. (Checklist 192 B).	66 FR 27266–27297, May 16, 2001.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections Appendix VII/Table 1; as amended December 9, 2005 effective March 23, 2006.
11. Change of Official EPA Mailing Address. (Checklist 193).	66 FR 34374–34376, June 28, 2001.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.11(a)(11); as amended December 9, 2005 effective March 23, 2006.
12. Mixed and Derived–From Rules Revision II. (Checklist 194).	66 FR 50332–50334, October, 3, 2001.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.3(a)(2)(iv)(A–G), and 261.3(g)(4); as amended December 9, 2005 effective March 23, 2006.
13. Inorganic Chemical Manufacturing Waste Identification and Listing. (Checklist 195).	66 FR 58258, November 20, 2001; 67 FR 17119–17120, April 9, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.4(b)(15), 261.4(b)(15)(i), 261.4(b)(15)(ii)–(iv), 261.4(b)(15)(v), 261.32, 261 Appendix VII, 268.36(a), 268.36(b) intro, 268.36(b)(1), 268.36(b)(2)–(5), and 268.36(c); as amended December 9, 2005 effective March 23, 2006.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
14. Corrective Action Management Units Amendments. (Checklist 196).	67 FR 2962–3029, January 22, 2002.	Arkansas Code of 1987 Annotated (A.C.A) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10, 268.40/Table, 264.550(a)–(b), 264.551, 264.551(a) intro, 264.552(a), 264.552(a)(1), 264.552(a)(1)(i)–(ii), 264.552(a)(1)(ii)(A)–(B), 264.552(a)(1)(iii), 264.552(a)(2)–(3), 264.552(a)(3)(i)–(iv), 264.552(a)(4)–(5), 264.552(b)(1), 264.552(b)(1)(i)–(ii), 264.552(b)(2), 264.552(c), 264.552(c)(1)–(7), 264.552(d), 264.552(d)(1)–(3), 264.552(e), 264.552(e)(1)–(3), 264.552(e)(3)(i)–(ii), 264.552(e)(3)(ii)(A)–(B), 264.552(e)(4), 264.552(e)(4)(i), 264.552(e)(4)(i)(A), 264.552(e)(3)(ii)(A)–(B), 264.552(e)(4), 264.552(e)(4)(i), 264.552(e)(4)(i)(A), 264.552(e)(4)(i)(A)(1)–(2), 264.552(e)(4)(i)(B)–(C), 264.552(e)(4)(ii)–(iv), 264.552(e)(4)(iv)(A)–(F), 264.552(e)(4)(v), 264.552(e)(v)(A)–(E), 264.552(e)(4)(v)(E)(1)–(5), 264.552(e)(4)(vi)–(vii), 264.552(e)(5), 264.552(e)(5)(i)–(iii), 264.552(e)(6), 264.552(e)(6)(i), 264.552(e)(6)(i)(A)–(B), 264.552(e)(6)(ii)(A)–(B), 264.552(e)(6)(iii), 264.552(e)(6)(iii)(A)–(F), 264.552(e)(6)(iv), 264.552(e)(6)(iv)(A), 264.552(e)(6)(iv)(A)(1)–(5), 264.552(e)(6)(iv)(B), 264.552(e)(6)(v), 264.552(f), 264.552(f)(1)–(2), 264.552(f)(i)–(ii), 264.552(g)–(h), 264.552(i), 264.552(j), 264.552(k), 264.554(a)(1)–(2), 264.555(a), 264.555(a)(1), 264.555(a)(2), 264.555(a)(i)–(ii), 264.555(a)(2)(iii), 264.555(a)(3), 264.555(b)–(e), 264.555(e), 264.555(e)(1)–(6), and 264.555(f)–(g); as amended December 9, 2005 effective March 23, 2006.
15. Hazardous Air Pollutant Standards for Combustors: Interim Standards. (Checklist 197).	67 FR 6792–6818, February 13, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 264.340(b)(1), 264.340(b)(4), 264.340(b)(i)–(ii), 265.340(b)(1), 265.340(b)(3), 264.340(b)(1), 264.340(b)(1), 264.340(b)(1), 266.100(b)(20)(i)–(v), 270.19(e), 270.62 intro, 270.66 intro, 270.235(a), 270.235(a)(1), 270.235(a)(1)(i), 270.235(a)(1)(i)(A)–(B), 270.235(a)(1)(ii)270.235(a)(1)(ii)(A), 270.235(a)(1)(ii)(A)(1)–(B), 270.235(a)(1)(ii)(B)(1)–(2), 270.235(a)(1)(ii)(B)(2)(i)–(ii), 270.235(a)(1)(iii), 270.235(a)(1)–(iii)(A)–(B), 270.235(a)(2), 270.235(a)(2)(i), 270.235(a)(2)(i)(A)(1), 270.235(a)(2)(i)(A)(2), 270.235(a)(2)(ii), 270.235(a)(2)(ii)(A), 270.235(a)(2)(ii)(A)(1)–(2), 270.235(a)(2)(ii)(B)(2)(i)–(ii), 270.235(a)(2)(iii), 270.235(a)(iii)(A)–(B), 270.235(b), 270.235(b)(1)(i)–(ii), and 270.235(b)(2); as amended December 9, 2005 effective March 23, 2006.
16. Hazardous Air Pollutant Standards for Combustors: Corrections. (Checklist 198).	67 FR 6968–6996, February 14, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 266.100(a), 266.100(b)(1), 266.100(b)(1), 266.100(d)(1)(i)(B), 266.100(d)(2)(i), 266.100(d)(2)(ii), 266.100(d)(3) intro, 266.100(d)(3)(i) intro, 266.100(d)(3)(i)(D), and 270.42(j)(1), 261.24(a); as amended December 9, 2005 effective March 23, 2006.
17. Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Waste and TCLP Use with MGP Waste. (Checklist 199).	67 FR 11251–11254, March 13, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.2(c)(3), 261.4(a)(17), 261.4(a)(17)(i)–(iv), 261.4(a)(17)(iv)(A)–(C), 261.4(a)(17)(v)–(vi); as amended December 9, 2005 effective March 23, 2006.
18. Zinc Fertilizer Rule. (Checklist 200).	67 FR 48393–48415, July 24, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.4, 261.4(a)(20), 261.4(a)(i)–(ii), 261.4(a)(20)(ii)(A)–(B), 261.4(a)(20)(ii)(B)(1)–(3), 261.4(a)(20)(ii)(C)–(D), 261.4(a)(20)(ii)(D)(1)–(3), 261.4(a)(20)(iii), 261.4(a)(20)(iii)(A)–(D), 261.4(a)(iv)–(v), 261.4(a)(21), 261.4(a)(21)(i), 261.4(a)(21)(i)(A)–(B), 261.4(a)(21)(ii)–(iii), 261.4(a)(21)(iii)(A)–(F), 266.20, 266.20(d), 266.20(d)(1)–(2), and 268.40; as amended December 9, 2005 effective March 23, 2006.
19. Treatment Variance for Radioactively Contaminated Batteries. (Checklist 201).	67 FR 62618–62624, October 7, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Section 268.40/Table; as amended December 9, 2005 effective March 23, 2006.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
20. Hazardous Air Pollutant Standards for Combustors—Corrections 2. (Checklist 202).	67 FR 77687–77692, December 19, 2002.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 270.19(e), 270.22 intro, 270.62 intro, 270.66 intro; as amended December 9, 2005 effective March 23, 2006.
21. Recycled Used Oil Management Standards; Clarification. (Checklist 203).	68 FR 44659–44665, July 30, 2003.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.5(j), 279.10, 279.10(j), 279.74, 279.74(b), 279.74(b)(1)–(4); as amended December 9, 2005 effective March 23, 2006.
22. Performance Track. (Checklist 204).	69 FR 21737–21754, April 22, 2004.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 262.34, 262.34(j), 262.34(j)(1)–(2), 262.34(j)(2)(i)–(iv), 262.34(j)(3), 262.34(j)(3)(i)–(iv), 262.34(j)(4)–(5), 262.34(j)(5)(i)–(ii), 262.34(j)(6)–(9), 262.34(j)(9)(i)–(iv), 262.34(k), 262.34(k)(1); as amended December 9, 2005 effective March 23, 2006.
23. NESHAP: Surface Coating of Automobiles and Light-Duty Trucks. (Checklist 205).	69 FR 22601–22661, April 26, 2004.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 264.1050, 264.1050(h), 265.1050, 265.1050(g); as amended December 9, 2005 effective March 23, 2006.
24. Nonwastewaters from Dyes and Pigments. (Checklist 206).	70 FR 9138–9180, February 24, 2005.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.4, 261.4(b)(15), 261.4(b)(15)(i)–(v), 261.32, 261.32(a)–(d), 261.32(d)(1)–(2), 261.32(d)(2)(i)–(iv), 261.32(d)(2)(iv)(A)–(C), 261.32(d)(3), 261.32(d)(3)(i)–(iii), 261.32(d)(3)(iii)(A)–(D), 261.32(d)(3)(iv), 261.32(d)(3)(iv)(A)–(B), 261.32(d)(3)(v)–(viii), 261.32(d)(ix)–(x), 261.32(d)(x)(A)–(D), 261.32(d)(3)(xi), 261.32(d)(xi(A)–(C), 261.32(d)(4)–(5), 261 Appendices VII and VIII, 268.20, 268.20(a)–(b), 268.20(b)(1)–(5), 268.20(c), 268.40/Table; as amended December 9, 2005 effective March 23, 2006.
25. Uniform Hazardous Waste Manifest Rule. (Checklist 207).	70 FR 10776–10825, March 4, 2005.	Arkansas Code of 1987 Annotated (A.C.A.) as amended, effective August 2005. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10, 261.7(b)(1)(iii)(A)–(B), 262.20, 262.20(a)(1), 262.20(a)(2), 262.21, 262.21/Section heading, 262.21(a)(1)–(2), 262.21(b), 262.21(b)(1)–(5), 262.21(5)(i)–(iii), 262.21(b)(6)–(8), 262.21(c), 262.21(d)(1), 262.21(d)(2), 262.21(d)(2)(i)–(iv), 262.21(d)(3), 262.21(e)–(f), 262.21(f)(1)–(6), 262.21(f)(6)(i)–(vi), 262.21(f)(7), 262.21(f)(7)(i), 262.21(f)(7)(i)(A)–(C), 262.21(f)(7)(ii), 262.21(f)(7)(ii)(A)–(C), 262.21(g)(1), 262.21(g)(1)(i)–(iv), 262.21(g)(2), 262.21(h)(1)–(3), 262.21(i)–(k), 262.21(1), 262.21(m)(1), 262.21(m)(1)(i)–(ii), 262.21(m)(2), 262.27, 262.27 heading, 262.27(a)–(b), 262.32, 262.32(b), 262.33, 262.34, 262.34(m), 262.34(m)(1)–(2), 262.54, 262.54(c), 262.54(e), 262.60, 262.60(c)–(e), 262/Appendix, 262/Appendix/8700–22, 262/Appendix 8700–22/I. Instructions for Generators, 262/Appendix/8700–22/II, Instructions for International Shipment Block, 262/Appendix/8700–22/III, Instructions for Transporters, 262/Appendix 8700–22/IV, Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities, 262/Appendix 8700–22A/Continuation Sheet, 263.20, 263.20(a)(1), 263.20(a)(2)–(3), 263.20(g), 263.20(g)(1)–(4), 263.21, 263.21(b)(1)–(2), 263.21(b)(2)(i)–(ii), 264.70, 264.70(a)–(b), 264.71, 264.71(a)(1)–(2), 264.71(a)(2)(i)–(v), 264.71(a)(3), 264.71(b)(4), 264.71(e), 264.72, 264.72(a), 264.72(a)(1)–(3), 264.72(b)–(c), 264.72(d)(1)–(2), 264.72(e), 264.72(e)(1)–(7), 264.72(f), 264.72(f)(1), 264.72(f)(7), 264.72(g), 264.76, 264.76(a), 264.76(a)(1)–(7), 264.76(b), 265.70, 265.70(a)–(b), 265.71, 265.71(a)(1)–(2), 265.71(a)(2)(i)–(v), 265.71(a)(3)–(4), 265.71(f), 265.72, 265.72(a), 265.72(a)(1)–(3), 265.72(b)–(c), 265.72(d)(1)–(2), 265.72(e), 265.72(e)(1)–(7), 265.72(f), 265.72(f)(1)–(7), 265.72(f)(7), 265.72(g), 265.76, 265.76(a)–(g); as amended December 9, 2005 effective March 23, 2006.

H. Where Are the Revised State Rules Different From the Federal Rules?

The State of Arkansas does not have an analog to 40 CFR 262.20(e) which allows generators under certain specified conditions not to be subject to the manifest requirements. This difference makes the State provisions more stringent than the Federal regulations. The State does not have an analog to 40 CFR 262.44 which subjects generators of between 100 and 1000 kilograms per month to reduced recordkeeping requirements. This difference makes the State program more stringent than the Federal program. The State does not have direct statutory analogs to RCRA sections 3004(d)–(k) and (m) which specifically addresses land disposal restrictions. Instead, the State has a number of very broad authorities to implement a hazardous waste management program. Those authorities which are most relevant to the land disposal restrictions include A.C.A. Sections 8–7–209(a)(10) which gives the Department the authority to establish polices and standards for effective hazardous waste management. Universal Treatment Standards 268.48/Table, and Generator's EPA Identification (ID) Number, ADEQ inadvertently left the entries in Regulations 23 which the State will add in the fall 2006 to update its regulations. Therefore, the Universal Treatment Standards 268.48/Table and the Generator's EPA ID will not be part of this authorization **Federal Register** notice.

To provide additional authority for corrective and remedial actions that would be consistent on a statewide basis at active or inactive sites, the State additionally cite to provisions of the Remedial Action Trust Fund Act (Act 479 of 1985, as amended, Ark Code, Ann. Sections 8–7–501 et seq. hereafter (RATFA)), provides ADEQ with broad authority to compel a site investigation and clean-up. While illustrative of the State's overall authority to perform corrective action and order remedial actions, the EPA is supportive of the States having broad authority to protect human health and the environment, but those additional authorities are not being approved as part of Arkansas' federally authorized RCRA corrective action program and are considered State only programs.

I. Who Handles Permits After the Authorization Takes Effect?

The State of Arkansas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which ADEQ is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Arkansas?

The State of Arkansas Hazardous Program is not being authorized to operate in Indian Country.

K. What Is Codification and Is the EPA Codifying Arkansas' Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart E for this authorization of Arkansas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 15, 2007.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 25, 2007.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E7–16009 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–325; FCC 07–33]

Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to foster the development of a vibrant terrestrial digital radio service for the public and to ensure that radio stations successfully implement digital audio broadcasting. The Commission's goals in this *Second Report and Order* are to begin to adopt service rules and other requirements for terrestrial digital radio.

DATES: Effective September 14, 2007, except for the rules in 47 CFR 73.404(b), 47 CFR 73.404(e), and 47 CFR 73.1201, which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order, First Order on Reconsideration,* and *Second Further Notice of Proposed Rulemaking,* FCC 07–33, adopted on March 22, 2007, and released on May 31, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission will publish a separate **Federal Register** Notice seeking public comments on the modified information collection requirements. Therefore, OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding once the **Federal Register** Notice is published. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

In this present document, we have assessed the effects of easing the filing requirements imposed on entities that wish to implement IBOC, and find that the steps taken will reduce paperwork burdens on small entities because they will no longer be required to seek prior authorization to implement certain technologies for use with digital audio broadcasting.

Summary of the Report and Order

I. Introduction and Executive Summary

1. In the *Digital Audio Broadcasting Report and Order,* we selected in-band, on-channel ("IBOC") as the technology enabling AM and FM radio broadcast stations to commence digital audio broadcasting ("DAB"). We note that in this *Second Report and Order* as well as in the *Second Further Notice of Proposed Rulemaking* (published elsewhere in this issue), DAB generally refers to the digital service broadcast by radio stations whereas IBOC generally refers to the technical system supporting DAB service. This terminology, and the subject matter discussed herein, applies to terrestrial over-the-air broadcasting. Satellite radio service, offered by XM and Sirius, is not a subject under consideration in this proceeding. In the *DAB R&O,* we adopted notification procedures allowing existing AM and FM radio stations to begin digital transmissions immediately on an interim basis using the IBOC system developed by iBiquity Digital Corporation ("iBiquity"). We concluded that the adoption of a specific technology would facilitate the development of digital services for terrestrial broadcasters. We deferred consideration of final operational requirements and related broadcast licensing and service rule changes to a future date. In a *Further Notice of Proposed Rule Making ("FNPRM"),* 69 FR 27874, we addressed issues left unresolved in the *DAB R&O,* 69 FR 78193, and sought comment on what changes and amendments to Part 73 of the Commission's rules were necessary to facilitate the adoption of DAB.

2. Through this proceeding, we seek to foster the development of a vibrant terrestrial digital radio service for the public and to ensure that radio stations successfully implement DAB. Our statutory authority for implementing these goals is derived from, *inter alia,* Sections 1, 4, 303, 307, 312, and 315 of the Communications Act. Our goals in this *Second Report and Order* are to begin to adopt service rules and other requirements for terrestrial digital radio. However, we find it necessary to ask additional questions, in a *Second Further Notice of Proposed Rulemaking,* on how to preserve free over-the-air radio broadcasting while permitting licensees to offer new services on a subscription basis. We also resolve and dispose of several petitions for

reconsideration that were filed in response to the *DAB R&O*.

3. In summary, the Commission, in this *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*:

- Refrains from imposing a mandatory conversion schedule for radio stations to commence digital broadcast operations;
- Allows FM radio stations to operate in the extended hybrid digital mode;
- Requires that each local radio station broadcasting in digital mode provide a free over-the-air digital signal at least comparable in audio quality to its analog signal;
- Continues to require that the main digital broadcast stream simulcast the material aired on the analog signal;
- Adopts a flexible bandwidth policy permitting a radio station to transmit high quality audio, multiple program streams, and datacasting services at its discretion;
- Allows radio stations to time broker unused digital bandwidth to third parties, subject to certain regulatory requirements;
- Applies existing programming and operational statutory and regulatory requirements to all free DAB programming streams, but defers the issue of whether and how to apply any specific new public interest requirements;
- Authorizes AM nighttime operations and FM dual antenna configurations;
- Considers and addresses other technical matters, such as FM translator and booster operations and TV Channel 6 interference issues;
- Defers discussion of whether the Commission should impose content control requirements that would prevent listeners from archiving and redistributing digital musical recordings transmitted by digital broadcast stations;
- Recognizes that further negotiations between the United States and the international community are taking place to resolve possible disputes about the implementation and operation of DAB by domestic radio stations;
- Dismisses several pending Petitions for Reconsideration and Petitions for Rulemaking that asked, *inter alia*, the Commission to reconsider the adoption of iBiquity's IBOC system as the technology chosen for DAB transmission;
- Seeks further comment on appropriate limits to the amount of subscription services that may be offered by radio stations.

II. Background

A. In-Band On-Channel Technology

4. IBOC technology makes use of the existing AM and FM bands (In-Band) by adding digital carriers to a radio station's analog signal, allowing broadcasters to transmit digitally on their existing channel assignments (On-Channel) while simultaneously maintaining their analog service. iBiquity's IBOC DAB technology enables radio stations to provide enhanced sound fidelity, improved reception, multiple audio streams, and new data services. It permits the transmission of near-CD quality audio signals on the FM band, and improved fidelity on the AM band, to digital-ready radio receivers along with information services, such as station, song and artist identification, stock and news updates, and local traffic and weather bulletins. These digital signals are free from the static, hiss, pops, and fades associated with the current analog system. iBiquity's IBOC technology will also allow for new radios to be "backward and forward" compatible, allowing them to receive existing analog broadcasts from stations that have yet to convert and digital broadcasts from stations that have converted. Existing analog radios will continue to receive analog broadcast signals.

5. The iBiquity IBOC system evaluated by the DAB Subcommittee of the National Radio Systems Committee ("NRSC") are "hybrids" in that they permit the transmission of both analog and digital signals within the spectral emission mask of a single AM or FM channel. In the hybrid mode, the iBiquity IBOC system places digital information on frequencies immediately adjacent to the analog signal. The digital signals are transmitted using orthogonal frequency division multiplexing ("OFDM"). The FM IBOC system has an extended hybrid mode, providing greater digital capacity than the hybrid mode. The IBOC system is also designed to eventually permit radio stations to convert to an all-digital mode of operation. The IBOC system uses perceptual coding to discard information that the human ear cannot hear. This reduces the amount of digital information, and as a result, the frequency bandwidth required to transmit a high-quality digital audio signal. In addition, the IBOC system in hybrid mode is designed to blend to analog when digital reception fails. This blending feature eliminates a digital "cliff effect" that would otherwise result in the complete and abrupt loss of reception at locations where the digital signal fails.

B. The Regulatory Development of Digital Audio Broadcasting

6. In 1990, the Commission first considered the feasibility of terrestrial and satellite digital radio services. As to the former, the Commission concluded that the digital terrestrial systems then under consideration were undeveloped and that it was premature to engage in discussions regarding DAB standards, testing, licensing, and other policy issues. In 1999, the Commission, recognizing new technological developments and innovations, commenced this proceeding to foster the adoption of a DAB system and develop a record regarding the legal and technical issues raised by the introduction of DAB. In the *DAB NPRM*, the Commission, *inter alia*, proposed criteria for the evaluation of DAB models and systems and considered certain DAB system testing, evaluation, and standard selection issues.

7. In the *DAB R&O*, the Commission selected the hybrid AM and FM IBOC system tested by the NRSC as the *de facto* standard for interim digital operation. As of the effective date of the *DAB R&O*, we stated we would no longer entertain any proposal for digital radio broadcasting other than IBOC. We found that IBOC was the best way to advance our DAB policy goals. We also found that this technology was supported by the broadcast industry and was the only approach that could be implemented in the near future. We recognized that the IBOC system was spectrum-efficient because it can accommodate digital operations for all existing AM and FM radio stations with no additional allocation of spectrum. The NRSC tests, as explained in the *DAB R&O*, showed that both AM and FM IBOC systems offer enhanced audio fidelity and increased robustness when encountering interference and other signal impairments. The tests also indicated that coverage for both systems would be at least comparable to analog coverage. We stated that audio fidelity and robustness will greatly improve when radio stations move to all-digital operations.

8. We established the following requirements for radio stations in the *DAB R&O*: (1) During interim IBOC operations, stations must broadcast the same main channel program material in both analog and digital modes; (2) interim IBOC facilities must use the station's authorized antenna system; a public notice seeking comment on the use of a dual FM antenna system was issued by the Media Bureau after the *DAB R&O* was released. The Media Bureau approved the use of separate FM

antennas in 2004; (3) due to interference concerns, stations implementing IBOC must communicate to the Commission the transmitter power output (for both analog and digital transmitters, if applicable) and must certify that the analog effective radiated power remains consistent with the station's authorization; (4) pending adoption of final rules, a licensee's authorization to transmit IBOC signals may be modified or cancelled by the Commission without prior notice or a right to a hearing to eliminate objectionable interference; and (5) IBOC AM stations may only operate during daytime hours.

9. In the *DAB FNPRM,* our goal was to create a record that would lead to permanent DAB policies and requirements. We sought public input on several issues related to digital audio broadcasting. Specifically we sought comment on: (1) The appropriate policies the Commission may adopt to encourage radio stations to convert from an analog-only radio service to a hybrid analog/digital radio service, and, eventually, to an all-digital radio service; (2) the types of digital services the Commission should permit radio stations to offer; (3) how noncommercial educational ("NCE") FM and low power FM stations may provide digital radio service to the public; (4) how the Commission's existing programming and operational rules should be applied to DAB; and (5) what changes and amendments to the Commission's technical rules are necessary to further the introduction of DAB.

10. In the *DAB NOI,* we asked whether the transmission of digital radio signals, as a free over-the-air service, would create an environment for persons to engage in indiscriminate recording and Internet redistribution of musical recordings that are part of unencrypted free digital audio broadcasts and sought comment on how this matter should be addressed. On this point, we have been informed that interested parties are attempting to resolve this issue through a marketplace solution. We encourage this approach, Accordingly, we will defer further action on this issue at this time. In the *DAB NOI,* we also raised for comment whether there were international broadcast treaty matters that needed to be addressed at this time to ensure that DAB is successfully implemented in the United States.

C. Radio Statistics

11. As of August 1, 2005, approximately 900 radio stations have entered into licensing agreements with iBiquity for its IBOC technology. As of September 30, 2005, there were 10,973 commercial radio stations, as well as 2,626 FM educational radio stations in the United States. Of the commercial stations, 6,215 were FM stations and 4,758 were AM stations. There were also 3,920 FM translator and booster stations. Currently, 1,272 stations (195 AM and 1,077 FM) are authorized by the Commission to broadcast using the IBOC system, and approximately 700 FM stations have requested and received special temporary authority for multicasting. These stations are mostly located in the top 50 markets in the country and reach 60 percent of all potential listeners. At least 10 stations are on the air in each of the following markets: Los Angeles, Chicago, San Francisco, Boston, Detroit and Atlanta. Approximately, 85 percent of the IBOC stations on the air are FM stations and 15 percent are AM stations. iBiquity has announced that 21 of the nation's top radio broadcast groups have committed to accelerate broadcast conversion of 2,000 AM and FM stations to IBOC technology. Clear Channel Communications, Entercom and Cox Radio have all made substantial commitments to convert many of their stations to digital over the next few years. Moreover, ten of the largest radio firms have formed a strategic alliance to coordinate the rollout of DAB. This effort includes the coordination of multicast formats, securing digital automotive receiver designs, and lowering the price points for digital radio receivers.

III. Policies and Rules for DAB

A. The DAB Standard

12. In the *DAB R&O,* we stated that the adoption of a DAB standard will facilitate an efficient and orderly transition to digital radio, and we supported a public and open standard-setting process. In the *DAB FNPRM,* we encouraged the NRSC to provide us with information on the standard setting process as events warrant. On April 16, 2005, the NRSC announced approval of the initial NRSC IBOC standard known as NRSC–5. The standard is based on iBiquity's IBOC technology. In the iBiquity system, audio source coding and compression are handled by iBiquity's HD codec. NRSC–5 does not include specifications for audio source coding and compression. iBiquity has committed to license all patents necessary to implement NRSC–5, either with or without the HD codec. It is also possible within the NRSC–5 standard to use audio source coding and compression schemes other than iBiquity's HD codec. On May 18, 2005, the NRSC submitted NRSC–5 to the Commission for consideration and evaluation. A *Public Notice* seeking comments on the NRSC–5 standard was issued by the Media Bureau on June 16, 2005. Following the close of the comment cycle in August 2005, we will review the filings and then take further action. The NRSC adopted the NRSC–5–A IBOC broadcasting standard in September 2005. The NRSC–5–A IBOC standard adds sections concerning Advanced Application Services and a new reference document to the NRSC–5 IBOC standard, but the NRSC has not yet submitted the NRSC–5–A IBOC standard to the Commission for review. While our consideration of the NRSC–5 IBOC standards is continuing, we find that it is in the public interest to adopt certain policies, rules, and requirements for digital radio before we have completed our evaluation of the standards. Radio stations and equipment manufacturers need to move forward with the DAB conversion, and we need not wait until after final action is taken on the IBOC standards to provide such guidance to them.

B. Conversion Policy

13. In the *DAB FNPRM,* we sought comment on the pace of the analog to digital radio conversion and the possibility of an all-digital terrestrial radio system in the future. We noted that Congress codified December 31, 2006, as the analog television termination date with certain exceptions, and we recognized that there is no analogous congressional mandate for the termination of analog radio broadcasting. We stated that the Commission has not considered a date certain as to when radio stations should commence digital broadcast operations because radio stations, unlike television stations, are not using additional spectrum to provide digital service. We also stated that band-clearing is not an issue. Based on these factors, we found that there was no immediate need to consider mandatory transition policies of the type contemplated with respect to DTV. However, we recognized the spectrum efficiencies and related new service opportunities inherent in the IBOC system. As such, we sought comment on what changes in our rules would likely encourage radio stations to convert to a hybrid or an all-digital transmission system and asked whether the government, the marketplace, or both should determine the speed of conversion from analog to hybrid and, eventually, to all digital radio service. We also asked whether we should conduct periodic reviews, in terms of the number of DAB receivers on the market and DAB stations on the air, to

help us decide how to set policy as the conversion to digital audio broadcasting moves forward.

14. Commenters generally support a marketplace transition to digital audio broadcasting. For example, the State Broadcasters Associations ("SBAs") states that the Commission should allow market forces to govern the adoption of DAB by the radio industry and that no station should be required to adopt IBOC or any other digital technology. The Public Interest Coalition ("PIC") agrees that the market should govern the pace of the DAB transition. PIC states that allowing market forces to guide the digital radio transition will permit stations to convert at a pace dictated by their own needs.

15. We will not establish a deadline for radio stations to convert to digital broadcasting. Stations may decide if, and when, they will provide digital service to the public. Several reasons support this decision. First, unlike television licensees, radio stations are under no statutory mandate to convert to a digital format. Second, a hard deadline is unnecessary given that DAB uses an in-band technology that does not require the allocation of additional spectrum. Thus, the spectrum reclamation needs that exist for DTV do not exist here. Moreover, there is no evidence in the record that marketplace forces cannot propel the DAB conversion forward, and effective markets tend to provide better solutions than regulatory schemes.

16. iBiquity argues that in the early stages of the transition, the Commission should favor and protect existing analog signals. It states that this could be accomplished by limiting the power level and bandwidth occupancy of the digital carriers in the hybrid mode. At some point in the future, when the Commission determines there is sufficient market penetration of digital receivers, iBiquity asserts that the public interest will be best served by reversing this presumption to favor digital operations. At that time, broadcasters will no longer need to protect analog operations by limiting the digital signal and stations should have the option to implement all-digital broadcasts. We decline to adopt iBiquity's presumption policy because it is too early in the DAB conversion process for us to consider such a mechanism. We find that such a policy, if adopted now, may have unknown and unintended consequences for a new technology that has yet to be accepted by the public or widely adopted by the broadcast industry.

17. Nevertheless, as enunciated in more detail below, we take significant steps to facilitate the digital radio conversion by adopting rules and policies that encourage radio stations to invest in digital equipment and programming. For example, we permit radio stations to provide various types of digital service as long as one free over-the-air digital stream of equal or greater quality than the station's existing analog signal is available for listeners. We also establish technical rules, such as permitting AM nighttime service, intended to reinvigorate the AM band. To ensure that DAB adoption proceeds in a timely manner, we will conduct periodic reviews of digital service and receiver penetration, as suggested by iBiquity, as circumstances warrant. iBiquity states that the Commission should conduct periodic reviews of station conversions and receiver penetration to ensure the functioning of market forces. iBiquity recommends the commencement of a first review five years after adoption of a *Second Report and Order* in this proceeding to check on the progress of the conversion. Other commenters agree that the Commission should periodically review the progress of the DAB conversion process.

18. *Extended Hybrid Mode.* NAB asserts that the Commission's authorization of extended hybrid mode DAB operations will further the conversion process. According to NAB, the extended hybrid mode, which adds up to 50 kbps, ("kbps" is the acronym for kilobits per second (1000 bits per second)), of data carrying capacity to an FM IBOC signal, will allow broadcasters to support a range of datacasting services without affecting the quality of the 96 kbps main channel digital audio signal. NAB asserts that while the use of the FM extended hybrid mode increases the bandwidth occupancy of the digital carriers, this will not increase interference to adjacent channels since the additional (*i.e.*, extended hybrid) digital carriers fall between a station's primary digital carriers and its host analog signal. Consequently, each broadcaster will be able to control the level of impact these extended hybrid signals may have on its own transmission. NAB comments that the Commission should authorize broadcasters to adopt all three extended hybrid modes and allow broadcasters to make the appropriate operational decisions based on the needs of their listeners. In the extended hybrid mode, digital carriers are added at frequencies immediately adjacent to the analog FM signal. The three extended hybrid modes (MP2, MP3, and MP4) are defined by the number of digital partitions added (one, two, or four pairs), respectively. NPR submitted a detailed report in November 2004 about the effect of extended hybrid operation on the host analog signal in various receivers. The report concludes that the FM extended hybrid mode does not affect host analog reception in car radios, home stereo receivers, or subsidiary communications authorization receivers.

19. The FM extended hybrid mode holds great promise for both broadcasters and their listeners. NPR has submitted data showing that the FM extended hybrid mode will work in most circumstances. NPR's report provides an ample basis for permitting radio stations to operate in an extended hybrid mode. Authorization of this digital mode will permit broadcasters to offer new and innovative services, especially to underserved populations, such as the visually impaired and non-English speaking citizens. If interference issues do arise, we are confident that the Commission staff will be able to resolve disputes on a case-by-case basis, and we intend that the staff will address these complaints in a timely fashion. In this connection, the Media Bureau has full authority to adjust and, if necessary, prohibit hybrid operations by broadcasters.

20. *All-digital Mode.* In the *DAB FNPRM*, we recognized that it may be premature to adopt policies for all-digital radio operation given that there are no standards for this type of broadcasting. NAB agrees that adoption of policies and procedures relating to the all-digital mode of IBOC operation would be premature in the absence of "comprehensive and impartial testing" of all-digital systems. NAB states, however, that it is important to recognize that the all-digital mode is an integral part of the IBOC DAB system specification and that the software iBiquity provides to its transmitter and receiver manufacturer licensees includes an all-digital mode of operation. NAB states that when the time is ripe to consider use of the all-digital mode, consumers and broadcasters who have already invested in IBOC DAB equipment will not be disenfranchised and a smooth transition from a hybrid to an all-digital environment will be assured. iBiquity agrees that additional work is required before there is an industry consensus on the IBOC all-digital system.

21. NPR states that it is premature for the Commission to contemplate a regulatory structure for all-digital terrestrial radio. It states that the elegance of the DAB transition is that the public, through its response to digital services, will determine the pace

of the transition. NPR further states that until the transition to all-digital operation becomes more imminent, the Commission should refrain from adopting any policy affecting all-digital DAB. PIC states that the Commission should use its authority to facilitate public participation in the further development of digital radio technology.

22. The ultimate goal of this proceeding is to establish a robust and competitive all-digital terrestrial radio system. We agree with NPR that it is premature, however, to consider the adoption of policies and rules for an all-digital mode of operation. There are many unresolved technical issues associated with the all-digital radio broadcast system and radio stations do not plan to offer all-digital service in the near future. Broadcasters, of course, are encouraged to experiment with an all-digital service, with appropriate authorization, but for regulatory purposes, our principle focus at this stage is to ensure that the ground rules are set for the introduction of hybrid IBOC DAB. When DAB receiver penetration has reached a critical mass and most, if not all, radio stations broadcast in a hybrid digital format, we will begin to explore the technical and policy issues germane to an all-digital terrestrial radio environment.

C. Service Rules

1. Flexible Uses

23. As explained above, the IBOC DAB system provides radio stations with new flexibility and capabilities. First and foremost, it allows FM broadcasters to scale their audio quality from 96 kbps downward in 1 kbps or smaller increments. Any reduction below 96 kbps frees capacity that can be devoted to other services. The AM system offers two levels of audio quality. The "core" AM carriers provide 20 kbps of robust monophonic sound. The "enhanced" layer adds an additional 16 kbps of digital carriers and enables full stereo sound. The AM system design allows broadcasters to devote the full 36 kbps to a single audio signal or, in the future, select only the 20 kbps core mode for audio and devote the remaining 16 kbps enhanced carriers for other services.

24. The scaling of the audio codec, which permits broadcasters to reduce the number of bits devoted to the main channel audio signal, may affect the quality of the audio. An audio codec compresses digital audio data prior to transmission and decompresses data received. However, it will not impact the robustness of the signal. The audio quality may be affected because the reduction in the bit rate may increase the likelihood of digital artifacts. The trade-off between bits and audio quality is not linear. There can be a substantial reduction in bit rate before most listeners would notice any digital artifacts that might impact audio quality. The broadcasters' and listeners' tolerance for reduced audio quality depends on many factors, most importantly, station program format.

25. The IBOC DAB system thus allows radio stations to broadcast a single high quality audio signal, multiple streams of lower quality audio, or various combinations of different quality audio signals. In addition, the system is capable of non-broadcast uses that are non-audio and/or subscription-based in nature. In the *DAB FNPRM*, we tentatively found that permitting radio stations to use their bandwidth in a flexible manner is in the public interest. Section 303 of the Act compels the Commission to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective uses of radio in the public interest."

26. NAB states that a digital radio station's service offerings should be determined by the licensee rather than by government mandate. NAB explains that digital business models will vary from licensee to licensee. Some stations, such as those with jazz or classical music genres, may choose to focus their resources on promoting the highest quality audio signal, while others may want to broadcast multiple streams of news, weather or financial information. NAB submits that these kinds of decisions are best left to consumer demand and the marketplace. NAB states that beyond an obligation to deliver at least one main audio channel of equal or better quality than a station's existing analog service, broadcasters should retain the flexibility to scale signals to enhance audio quality, to upgrade existing supplementary services, or offer new services for their audiences. NAB concludes that for DAB to fulfill its potential, supplementary services must be a viable option. NPR states that the Commission should not specify the amount of capacity stations should allocate to any given audio or data service. NPR argues that radio station licensees, like digital television licensees, should have the freedom to develop innovative services for the public.

27. iBiquity also urges the Commission to adopt a flexible approach to its service rules because radio stations have only begun to explore the IBOC system options. iBiquity asserts that this approach will encourage broadcasters to experiment and will foster the development of innovative new services for the listening public. iBiquity states that the imposition of unnecessarily restrictive service rules will have the effect of stifling the development of new services. Cox likewise suggests that the Commission should maintain a "do no harm" position, arguing that if concerns arise later in the conversion, the Commission can always adopt responsive rules at that time. There were no comments criticizing the adoption of a flexible use policy.

28. We expect and intend that the fundamental use of DAB will be for the provision of free over-the-air radio service. We will, therefore, require radio stations to provide at least one free digital over-the-air audio broadcast service. Specifically, radio stations operating in a digital mode must provide one free digital audio programming service that is comparable to or better in audio quality than that of their current analog service. Such a baseline requirement mirrors the Commission's analogous requirement for digital television stations, and is based on the same underlying policy consideration that significant benefits from digital conversion should flow directly to the public. We do not here alter the requirement set forth in the *DAB R&O* that a radio station must simulcast its analog programming service on its digital signal. However, we will revisit the simulcasting requirement in the future when we decide whether or not to approve the NRSC–5 standard. In any event, simulcasting is part of the IBOC operational structure and a radio station must duplicate its programming if it wants the DAB "blend" feature to work properly.

29. Taking these points into consideration, we will permit radio stations to use their frequencies as the marketplace dictates, an approach supported by dozens of interested parties and consistent with our digital television policy. We are hopeful that this flexibility also will lead to a more rapid conversion to DAB. We elaborate on this issue below by addressing issues raised regarding some of the services DAB stations might choose to provide.

a. Digital Audio Broadcasting Signal Quality

30. In the *DAB FNPRM*, we sought comment on whether or not we should require broadcasters to provide a high quality digital audio signal and, if so, what minimum bandwidth should be required for this purpose. We also sought comment on the amount of

capacity necessary to allow radio stations to broadcast a high quality digital signal while permitting the introduction of new datacasting and audio services.

31. iBiquity supports the use of the IBOC system to improve audio quality. It believes, however, that market forces should be allowed to determine the optimal quality levels of the IBOC system. iBiquity argues that the Commission should not establish minimum quality requirements, but rather should allow radio stations to make their own determination of the appropriate level of audio quality for their particular listeners. NAB states that, at this early point in the digital radio transition, it is impossible to conclude with any measure of certainty the number of bits necessary to support a good quality main audio signal or how many secondary audio streams an IBOC radio station can transmit without degrading audio quality. Cox Radio adds that any restrictions contemplated by the Commission may become obsolete soon after they are adopted.

32. As discussed above, we decline to require broadcasters to dedicate a minimum level of digital bandwidth to provide a high quality digital signal. Instead, we leave the decision as to the quality of the signal provided to the discretion of the radio station licensee, subject to the comparable signal obligation discussed earlier. The IBOC system allows stations to offer the public high quality audio, as well as a broad variety of other innovative services. We believe that we should provide broadcasters with the freedom to innovate and respond to the marketplace in developing not only the mix of services, but also the quality of the audio they will offer the public.

b. Multicasting

33. The IBOC FM DAB system permits an FM radio station to broadcast multiple audio programming services within its assigned channel. As AM IBOC operation develops, iBiquity plans to introduce the option to split the digital AM bitstream into two channels. In order to provide multiple digital programming streams, a radio station must reduce the audio bit rate of its main channel broadcasts or use the extended hybrid mode to obtain additional capacity that can be devoted to a lower bit rate supplemental audio channel. Testing conducted by NPR established the viability of this functionality and also demonstrated that the supplemental channel will have coverage equivalent to the coverage of the main channel audio signal. Due in part to IBOC system design constraints, however, any supplemental audio services will not be able to take advantage of the blend function available to the main channel audio. The blend function enhances rapid tuning for the main channel digital signal and provides an analog backup signal in the event the main channel audio signal is lost. Therefore, any supplemental channel will require several seconds for tuning and will experience muting of the audio in the event of signal loss.

34. In the *DAB FNPRM*, we asked how the availability of additional audio streams can further our diversity goals, particularly for people with disabilities and minority or underserved segments of the community. We tentatively concluded that adopting DAB service rules that encourage more audio streams would promote program diversity, and that, once the Commission adopts a policy in this area, radio stations would no longer need to obtain experimental authority to broadcast multiple digital programming streams. Section 303 of the Act compels the Commission to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective uses of radio in the public interest."

35. Generally, commenters urged the Commission to authorize multicasting on a permanent basis, and at the same time, asked us to avoid excessive regulation that would disadvantage any new type of digital service. Specifically, commenters emphasized the benefits of multiple digital audio channels and how that IBOC feature will ensure the continuing viability of radio reading services as well as enhance the ability of broadcasters to offer more niche programming and public affairs broadcasts.

36. The IBOC system makes it possible for FM radio stations to air additional streams of traditional radio programming (*e.g.*, music, news, and sports), public safety services (*e.g.*, national security announcements), assisted living services (*e.g.*, radio reading services), non-English language programming, and news services to underserved populations. Experts state that one 96 kbps FM channel could be divided into up to eight streams of digital programming. Many stations commented that multicasting will foster the expansion of local public affairs programming generally and programming serving the Latino, Asian, and other communities of common cultural interest, in particular. A number of such stations comment that they will use their digital capacity to broadcast more foreign language services. Indeed, a large number of NCE stations filed comments specifically stating that the following program services are likely to emerge: (1) Special programming for English as a Second Language ("ESL") listeners; (2) native American programming; (3) public affairs programming, such as school board, civic and local government meetings; (4) youth, young adult and student productions; (5) reading services for the blind; (6) homeland security/public safety programming; (7) arts and culture programming; (8) breaking news/special news events/emergency alerts; (9) international news coverage; and (10) educational/children's programming. NPR has announced that it will offer five music services for multicast streams on affiliated public radio stations: classical, jazz, electronica, triple-A, and folk. Other program offerings NPR is developing for stations with new channels include a news and information service and formats that would serve culturally diverse audiences. Westwood also said it would make its lineup of news, sports, talk and entertainment programming, as well as its traffic and information content available to HD Radio FM broadcasters' multicast services. In addition, iBiquity reports that commercial radio broadcasters, including Infinity, Capitol Broadcasting, and Greater Media have all launched new multicast digital radio streams with different formats in the summer of 2005.

37. We will permit radio stations to provide multiple audio streams of digital programming without the need for individual station approval by the Commission. FM stations currently multicasting pursuant to experimental authority from the Commission are released from the requirement to submit a report, as specified in the letter granting multicasting authority. We believe that radio stations can best stimulate consumers' interest in digital audio services if they are able to offer the programs that are the most attractive to their communities. Further, allowing radio stations the flexibility to provide multicast services will allow them to offer a mix of services that can promote increased consumer acceptance of DAB, which, in turn, will likely speed the conversion process. Additionally, diversity of programming services may result from multicasting and provide programming to unserved and underserved segments of the population. We strongly encourage digital audio broadcasters to use their additional channels for local civic and public affairs programming and

programming that serves minorities, underserved populations, and non-English speaking communities.

38. Mt. Wilson Broadcasters opposes Commission action authorizing multicasting, at least at the present time, arguing that "splitting the channel" will derogate the service provided by FM radio stations. NPR asserts that Mt. Wilson Broadcasters is misinformed about the purposes of DAB, the technical feasibility of multicasting, and the competitive consequences of authorizing full-power broadcast stations to broadcast multiple audio channels. We find that multicasting will not derogate the service as Mt. Wilson argues. An FM station commencing DAB operations will have approximately the same geographic reach for its digital signal as for its analog signal. Moreover, splitting the FM signal into multiple digital streams will not harm listeners in any manner. As noted above, a licensee must provide a broadcast stream at least equivalent in quality to its existing analog service. In fact, an FM station operating a digital service will be able to provide more services than it could with only its analog signal. Accordingly we perceive no derogation of the type forecast by Mt. Wilson Broadcasters.

39. *Time Brokering.* In the *DAB FNPRM,* we sought comment on the extent, if any, to which we should permit radio stations to lease unused or excess bandwidth to unaffiliated audio programmers. In this context, we noted that an unaffiliated entity may schedule the programming output of a particular digital audio stream for a period of time under a contract with the licensee. We stated that radio stations may benefit from leasing unused or excess air-time because they would have additional funds to invest in new programming, which, in turn, would benefit the public. We asked whether our diversity goals will be furthered if we allow independent programmers to lease excess capacity from broadcast licensees.

40. We will permit radio stations to enter into time brokerage agreements for their digital bandwidth. "Time brokerage" (also known as "local marketing") is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it. Because these agreements are essentially leasing arrangements, they achieve benefits similar to those achieved through leasing arrangements. The Commission has for many years permitted brokering of FM subcarriers and excess digital television bandwidth. Moreover, we permit stations to enter into time brokerage agreements on their main broadcast channels. Subject to our attribution rules, as noted below, broadcasters will have the flexibility in structuring business arrangements and attracting capital to make DAB a success. We agree with the SBAs that the adoption of this policy will allow licensees to recoup some of the costs associated with the digital conversion, and to increase outlet diversity. We strongly encourage digital audio broadcasters to enter in such agreements with "eligible entities," which often include businesses owned by women and minorities. An eligible entity is an entity that would qualify as a small business consistent with SBA standards for its industry grouping. Moreover, the brokering of individual digital streams will provide a means to overcome some financial impediments to getting involved in broadcasting and there is a potential for new market entrants to take advantage of such arrangements. Whatever the agreement, it is the licensee who remains responsible for ensuring the fulfillment of all obligations incumbent upon a broadcast licensee, including ultimate control over program material aired on its station's facilities.

41. In the *DAB FNPRM,* we also asked how Section 310(d) of the Act, regarding transfers of control, should apply to these situations as well as how the Commission's broadcast ownership limits and attribution rules would be affected if an unaffiliated programmer, that is also the licensee of another station in the same market, leases one of the additional audio streams. Moreover, we asked whether there should be an overall limit to the amount of programming time a particular radio station can broker or lease to others.

42. A number of commenters raise issues regarding the interplay between multiple audio streams, brokering, and ownership issues. For example, REC Networks assert that when there is a substantial penetration of DAB receivers in the marketplace, owners of multiple FM stations in a single market should consolidate their multiple FM station broadcasts on a single channel, multicast their programming services using IBOC technology, and then divest their additional transmitter facilities. The SBAs state that brokering of a multicast audio stream would not constitute an illegal transfer of control. They argue that leasing of a digital stream is consistent with longstanding Commission treatment of time brokerage arrangements. Specifically, PIC argues, and we agree, that a licensee owning the maximum permissible number of stations in a particular market should not be allowed to acquire additional broadcast streams through time brokering agreements. Under the Commission's established policies for attribution of such agreements, we count the brokered station toward the brokering licensee's permissible ownership totals under the local broadcast ownership rules. Where an entity owns or has an attributable interest in one or more stations in a local radio market, time brokering of another station in that market for more than 15 percent of the brokered station's broadcast time per week will result in counting the brokered station toward the brokering licensee's ownership caps. We clarify that, in the multicast context, a station owner who programs more than 15 percent of the total weekly hours broadcast on a digital audio stream of another station in the market will be considered to have an attributable interest in the brokered station. The interest attributable to a station owner in such circumstances is equivalent to the percentage of total broadcast time that the stream which is attributable to the station owner constitutes. Under a time brokering agreement, licensees must ensure that they maintain full, effective, and ultimate control over all material aired on their stations. Therefore, time brokering agreements do not raise transfer of control issues under Section 310(d) of the Act.

c. Datacasting

43. In the analog context, all FM stations are authorized to transmit secondary services via an automatic subsidiary communications authorization ("SCA") under Section 73.295 of the Commission's rules. Subsidiary communication services are those transmitted on a subcarrier within the FM baseband signal, not including services that enhance the main program broadcast service or exclusively relate to station operations. Subsidiary communications include, but are not limited to, services such as radio reading services, utility load management, market and financial data and news, paging and calling, traffic control signal switching, bilingual television audio, and point to point or multipoint messages. Some FM broadcasters currently provide emergency alert system notifications and paging functions under SCA authorization.

44. Section 73.593 of the Commission's rules pertains to subsidiary communications services broadcast by NCE FM radio stations. Under our rules, the licensee of an NCE

FM station is not required to use its subcarrier capacity, but if it chooses to do so, it is governed by the SCA rules for commercial FM stations regarding the types of permissible subcarrier uses and the manner in which subcarrier operations are conducted. A significant difference from the commercial FM SCA rules, however, is the requirement that the remunerative use of an NCE FM station's subcarrier capacity not be detrimental to the provision of existing or potential radio reading services for the blind or otherwise inconsistent with its public broadcasting responsibilities.

45. Similarly, Section 73.127 of the Commission's rules permits AM broadcast stations to use their AM carriers to transmit signals not audible on ordinary consumer receivers for both broadcast and non-broadcast purposes. A station's AM carrier service authorization may not be retained or transferred in any manner separate from the station's license. The licensee must establish that the broadcast operation is in the public interest wholly apart from the subsidiary communications services provided. In the analog context, the station identification, delayed recording, and sponsor identification announcements required by Sections 73.1201, 73.1208, and 73.1212 are not applicable to leased communications services transmitted via services that are not of a general broadcast nature. For both AM and FM services, the licensee must retain control over all material transmitted in a broadcast mode via the station's facilities and has the right to reject any material that it deems inappropriate or undesirable.

46. iBiquity, in a partnership with broadcasters and equipment manufacturers, has developed IBOC data services for terrestrial radio stations. The IBOC system permits radio stations to offer varied and robust datacasting applications. Using an established standard ID3 format (ID3 is a file tagging software used to provide text information such as artist name and song title information. ID3 also supports text descriptions with ads, such as phone numbers and Web addresses.), information services can be used to provide listeners with song, CD title, and artist information. In addition, information and host profiles will complement advertisements and talk radio formats. Synchronized multimedia integration language ("SMIL"), a protocol used by iBiquity as the foundation for advanced application services ("AAS"), allows for the creation and delivery of new data services in the future. Some possible commercial applications envisioned by iBiquity include: (1) Enhanced information services such as weather and traffic alerts delivered to DAB receivers as a text and/or audio format; (2) enhanced advertising services; (3) listener controlled main audio services providing the ability to pause, store, fast-forward, index, and replay audio programming via an integrated program guide with simplified and standard user interface options; and (4) supplementary data delivery that will spur the introduction of automatic driving assistance applications, navigation and rear-seat entertainment programming. Robert Struble, iBiquity's CEO, has noted that the text of advertising messages could be synchronized to display on a DAB receiver's text screen at the same time as a related commercial is broadcast. We sought comment on whether we should permit radio stations to distribute any and all types of datacasting services. We also sought comment on what data services digital noncommercial educational stations should be permitted to offer.

47. iBiquity urges the Commission to authorize datacasting services and to include sufficient flexibility in the datacasting authorization to promote innovation in this area. iBiquity states that there is tremendous opportunity for the development of low-cost innovative datacasting services. iBiquity submits that the greater capacity and reliability of data services based on the IBOC system will help ensure that data services are introduced. It suggests that promotion of datacasting will help introduce new services to the public and will also provide added value for consumers who invest in IBOC receivers. NAB similarly asserts that datacasting services are still in the nascent stage, and that the Commission's main goal at this time should be to encourage and enable broadcasters to innovate and experiment with these aspects of digital radio. NAB maintains that providing broadcasters with flexibility in this area will expedite the emergence of DAB. Bloomberg states that the Commission must not unnecessarily limit the ability of the DAB platform to carry program-associated data or other additional, innovative data services. It argues that the best way to encourage investment, and thereby spur terrestrial radio broadcasters to make the conversion to DAB, is to provide broadcasters with the utmost flexibility to develop new digital applications. The SBAs state that the Commission should permit licensees to provide for datacasting, within the constraints of the IBOC technical standards, mainly because it would enhance the multiplicity of information sources. NPR states that the opportunity to offer datacasting services will motivate stations to develop new services beyond what is available today. It expects stations to use their technical capabilities to provide homeland security-related services, addressing local, regional, or national events and emergencies, and provide expanded weather alerts, traffic safety, and other public safety services.

48. Consistent with our decision with regard to audio multicasting services, we conclude that permitting broadcast licensees flexibility with regard to the provision of datacasting services is in the public interest. We will permit radio stations to provide any type of digital datacasting service, consistent with existing broadcast policies and rules applicable to analog SCA services, as long as it does not derogate the mandated stream of free audio programming. Our aim is to promote innovation and experimentation that will lead to applications that will serve the public, such as song and artist information as well as enhanced news, weather, and emergency updates. We note that, for reasons discussed *infra*, we will currently only allow datacasting that is subscription pursuant to an experimental authorization granted by the Commission.

2. Ancillary Subscription Services

49. Radio stations may wish to offer certain digital audio or data content under a subscription model. In this context, ancillary subscription services may be available for a fee or the listener may simply need to enter a code to access the service. IBOC DAB has the potential to limit access to certain channels by receiver serial number, just like satellite radio receivers are presently able to do. In the *DAB FNPRM*, we sought comment on whether we should permit ancillary subscription services. One proposal offered in the *DAB FNPRM* was to permit ancillary subscription services as long as they do not derogate the free services a radio station broadcasts. We also asked whether we should impose spectrum fees for that portion of digital bandwidth used for ancillary subscription services. Commenters generally urged the Commission to permit ancillary subscription services, but argued against the imposition of fees associated with the offering of such services. iBiquity argues that broadcasters can currently provide both datacasting and supplemental audio channels using SCA analog frequencies without incurring additional spectrum fees and the same approach should be applied to digital services. NAB states

that it would be inappropriate to consider fees at this time because a fee requirement would have the effect of discouraging innovation and new services that would benefit the public. Nevertheless, we remain concerned that pay services, left unrestricted, could overwhelm free over-the-air services, to the detriment of the listening public. We expect terrestrial radio service to remain a free over-the-air service and, therefore, the amount of capacity devoted to ancillary subscription services must be limited. We thus seek further comment on ancillary subscription service issues in a *Second Further Notice of Proposed Rulemaking*, found below. Until this *Rulemaking* is completed and a determination is made regarding assessment of the five percent fee, discussed *infra*, we will only allow ancillary subscription services pursuant to an experimental authorization granted by the Commission. We would grant such authorizations for uses that serve the public interest, including current subcarrier services like radio reading services.

3. Noncommercial Educational Stations

50. NCE radio stations face unique opportunities and challenges as they move to implement DAB. The Act states that a "noncommercial educational broadcast station" must be "owned and operated by a public agency or nonprofit private foundation, cooperation, or association" or "owned and operated by a municipality and which transmits only noncommercial programs for educational purposes." In 1981, Congress amended the Act to give NCE stations more flexibility to generate funds for their operations. As amended; Section 399B of the Act permits NCE stations to provide facilities and services in exchange for remuneration as long as those uses do not interfere with the station's "provision of public telecommunications services." Section 399B also requires that public stations engaged in revenue generating activities comply with accounting procedures designed to separately identify these commercial revenues and costs, and it prohibits Corporation for Public Broadcasting funds from being used to defray any costs associated with these activities. Section 399B, however, does not permit NCE stations to make their facilities "available to any person for the broadcasting of any advertisement." Section 73.503 of the Commission's rules addresses the licensing requirements and service of NCE FM stations. Under our rules, an NCE FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program. Although the Commission does not reserve frequencies for NCE use in the AM service, and thus has not codified noncommercial eligibility rules for this service, the Commission has treated AM stations that satisfy the NCE FM eligibility rules as noncommercial AM stations. Under Section 73.621 of the Commission's rules, public television stations are required to furnish primarily an educational as well as a nonprofit and noncommercial broadcast service. Section 73.621 of the Commission's rules provides that "noncommercial educational broadcast stations will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service."

51. In 2001, the Commission concluded that an NCE television licensee must use a substantial majority of its digital television capacity for nonprofit, noncommercial, educational broadcast services. In addition, the Commission held that the statutory prohibition against broadcasting of advertising on NCE television stations applies to broadcast programming streams provided by NCE licensees, but does not apply to any ancillary or supplementary services presented on their excess DTV channels that do not constitute broadcasting. Like commercial DTV stations, NCE DTV licensees must pay a fee of five percent of gross revenues generated by ancillary or supplementary services provided on their DTV service. In *Office of Communication, Inc. of United Church of Christ* v. *F.C.C.*, the U.S. Court of Appeals for the District of Columbia Circuit upheld the *DTV NCE A&S Order*. In the *DAB FNPRM*, we sought comment on what, if any, special rules or considerations should apply to NCE radio stations in light of our decision regarding NCE DTV stations and the D.C. Circuit's *UCC* decision. We also sought comment on how we can ensure NCE radio stations remain noncommercial in nature as the radio industry converts to DAB.

52. NPR favors a flexible use policy for NCE station digital bandwidth. It states that it does not expect the remunerative use of digital bandwidth to result in a profusion of commercial service offerings by NCE radio stations. NPR further states that it expects any subscription or other services provided by NCE stations to relate to each station's NCE mission. For instance, although subscription services are not anticipated for several generations of digital radio receivers, some NCE radio stations may experiment with offering "pledge-free," but otherwise identical, versions of their free over-the-air services to those listeners who financially support the station. NPR adds that since the authorization of enhanced underwriting and remunerative subcarrier services in the early 1980s, the ensuing diversity of revenue sources has emerged as the key to public radio's independence from any single revenue source. According to NPR, while the remunerative use of NCE station facilities and analog spectrum has, to date, provided only modest amounts of revenue, the remunerative use of digital technology will enable NCE stations to better weather the periodic downturns in corporate and foundation underwriting, membership dues, and, in the case of public radio, State and Federal funding.

53. PIC argues that NCE radio stations, like NCE television stations, should be obligated to "use their entire digital capacity primarily for a nonprofit, noncommercial, educational broadcast service," meaning a "substantial majority" of the entire digital capacity. PIC urges the Commission not to repeat the "error" it made in authorizing NCE DTV stations to offer remunerative services. PIC also asserts that the "over commercialization" resulting from remunerative activities will discourage public support for public broadcasting. PIC additionally claims that allowing NCE radio stations to offer advertising supported non-broadcast services violates the intent underlying the original reservation of spectrum and will reduce "ratio of noncommercial-to-commercial programming."

54. NPR objects to PIC's suggestions, stating that NCE television stations are subject to a more exacting regulatory mandate to furnish "primarily" a non-profit and noncommercial television broadcast service. NCE radio stations, on the other hand, are licensed "for the advancement of an educational program." NPR notes that the Commission adopted a higher standard for NCE television stations because such stations use greater amounts of spectrum, have more extensive coverage areas, and are far fewer in number. NPR also asserts that requiring NCE radio stations to reserve a "substantial majority" of their entire digital capacity for a free NCE service would significantly restrict station flexibility to determine the appropriate mix of services, and how much capacity to devote to each, based on the specific

needs of their community of service. NPR states, for example, that such a "substantial majority" requirement would prevent stations from dividing the 96 kbps bitstream into two 48 kbps service streams. This is an approach that WAMU–FM is pursuing, as it has found that splitting the bandwidth evenly into 48 kbps each was "extremely good" for both the main and the supplemental channel. According to NPR, a minimum quantitative requirement, and one requiring a "substantial majority" of the bitstream, in particular, would countermand the inevitable improvement in audio coding technology that will otherwise permit higher quality audio using fewer kilobits.

55. We defer consideration of the issues discussed above to a later date. As noted above, we have decided to further examine the offering of subscription services in a *Second Further Notice of Proposed Rulemaking*. In addition to our concern about maintaining the free nature of all terrestrial radio services, we wish to preserve the noncommercial educational nature of NCE service. We will address both issues after considering the comments in response to our *Second Further Notice of Proposed Rulemaking*. In any event, we hold that an NCE radio station is obligated, like its commercial counterpart, to provide at least one free over-the-air digital programming stream that is comparable to or better in audio quality than its analog signal.

4. Low Power FM

56. In 2000, the Commission authorized the licensing of two new classes of FM radio stations, one operating at a maximum power of 100 watts and one operating at a maximum power of 10 watts. We note that a 100-watt Low Power FM station can serve an area with a radius of approximately 3.5 miles. The Commission has yet to authorize any 10 watt stations in the LPFM service. Both types of stations, known as low power FM ("LPFM") stations, were authorized in a manner that protects existing FM service. The Commission stated that LPFM stations would be operated on a NCE basis by entities that do not hold an attributable interest in any other broadcast station or other media subject to our broadcast ownership rules. The Commission established the new LPFM service to create new broadcasting opportunities for locally-based organizations to serve their communities. In the *DAB FNPRM*, we sought comment on the conversion of LPFM stations to digital operation and the potential impact of such a conversion on other stations.

57. iBiquity states that LPFM stations should have the option to convert to digital operations. It states that IBOC-based equipment can operate at the 100-watt power levels authorized for LPFM service. iBiquity asserts that in the case of 10-watt stations, however, the extremely low power level of those stations may make digital broadcasts infeasible. The IBOC system broadcasts the digital signal at one percent of the station's analog power level. In the case of a 10-watt LPFM station, that digital power level would fall below the noise floor and would be difficult for any digital receiver to recover; however, this would not be the case with 100-watt LPFM stations. iBiquity notes that because these LPFM stations are required to comply with the Commission's adjacent channel interference restrictions, the introduction of digital broadcasts by these stations should not create harmful new interference.

58. We find that if an LPFM station intends to transmit in digital, and is technically capable of doing so, there should be no regulatory impediments preventing its adoption of the IBOC technology. We recognize that LPFM is a new service which involves non-commercial, community-oriented stations and that these stations have limited resources. We are committed to working with these stations to address issues regarding their transition to digital as they arise. We note that in 2005 the Commission released a *Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, which further advanced the introduction of LPFM service in numerous areas across the United States. This *Second Order* addressed technical, operational, and ownership issues necessary for the further development of the service. In the *Second Order on Reconsideration*, the Commission modified its rules governing minor changes and technical minor amendments for LPFM stations. We also clarified the definition of locally originated programming for purposes of resolving mutually exclusive LPFM applications. In the *Further Notice of Proposed Rulemaking*, the Commission sought comment on a number of technical and ownership issues related to LPFM.

5. Licensing Procedures

59. Under Section 73.1695 of the Commission's rules, the Commission considers whether a proposed change or modification of a transmission standard for a broadcast station would be in the public interest. Sections 73.3571 and 73.3573 of the Commission's rules discuss the processing of AM and FM broadcast station applications, respectively. In the *DAB FNPRM*, we sought comment on what, if anything, the Commission should do to amend or replace these procedural requirements in the context of DAB. With regard to mandatory paperwork, Section 73.3500 of the Commission's rules lists the applications and report forms that must be filed by an actual or potential broadcast licensee in certain circumstances. In the *DAB FNPRM*, we sought comment on which forms and applications must be modified because of DAB. We note that the following forms may be at issue: (1) Form 301—Application for Authority to Construct or Make Changes in a Commercial Broadcast Station; (2) Form 302–AM—Application for AM Broadcast Station License; (3) Form 302–FM—Application for FM Broadcast Station License; (4) Form 340—Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station; (5) Form 349—Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station; and (6) Form 350—Application for an FM Translator or FM Booster Station License. In the *DAB FNPRM*, we sought comment on any specific changes to these forms. We find that certain changes to our licensing processes are necessary to accommodate DAB operations. Rather than amend the administrative licensing requirements and generate new forms now, however, we will delegate the authority to make such changes, to the extent possible, to the Media Bureau. This delegation permits the Bureau staff to make changes on an expedited basis as circumstances warrant, subject to Office of Management and Budget approval under the Paperwork Reduction Act.

D. Programming and Operational Rules

1. Public Interest Issues

60. The *DAB FNPRM* sought comment on a number of policies and requirements impacting the public interest. Such subjects as sponsorship identification, political advertising, and cigarette advertising were raised for comment. The Commission received extensive comment on several issues, including radio reading services, the emergency alert system, and station identification. Therefore, these subjects are discussed separately below.

a. Public Interest Obligations

61. It is incumbent upon the Commission to ensure that broadcast radio and television stations serve the

"public interest, convenience and necessity." To ensure that broadcasters' service meets this high standard, both the Congress and the Commission have devised various program-related and operational duties that licensees must discharge. Broadcasters, for example, are required to air programming responsive to community needs and interests and have other service obligations. We remain committed to enforcing our statutory mandate to ensure that broadcasters serve the public interest and remind broadcasters of the importance of meeting their existing public interest obligations. We also encourage them to increase public disclosure of the ways in which they serve the public interest. Our current requirements, including those implementing specific statutory requirements, were developed for broadcasters who were essentially limited by technology to a single, analog audio programming service and minor ancillary services. The potential for a more flexible and dynamic use of the radio spectrum, as a result of IBOC, gives rise to important questions about the nature of program-related and operating obligations in digital broadcasting because the scope of those responsibilities has not been defined.

62. In the *DAB FNPRM*, we sought comment on how to apply such obligations to DAB. We also tentatively concluded that the conversion to DAB will not require changes to the following requirements: (1) Sections 312(a)(7) (Section 312(a)(7) provides that "[t]he Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to or permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." This right of access does not apply to candidates for state or local offices.) and 315 (Section 315(a) of the Act, as amended, provides that "if any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.") Section 73.1940 of the Commission's rules defines "legally qualified candidate" as any person who has publicly announced his or her intention to run for nomination or office, is qualified under the applicable local, State, or Federal law to hold office for which he or she is a candidate, and has qualified for ballot placement or has otherwise met all the qualifications set forth in the Commission's rules. In addition, both the Act and the rules narrowly define the term "use" and exclude from the definition candidates' appearances in *bona fide* newscasts, interviews, documentaries, and the on-the-spot coverage of news events. Licensees have no power of censorship over the material broadcast under the equal opportunity provisions of Section 315(a). Two years ago, Congress amended the lowest unit charge provision of Section 315, codified the Commission's existing political file rule, and expanded that rule to require that a broadcast's station's public file contain information regarding certain issue advertising. The Supreme Court upheld these amendments to the Communications Act in *McConnell* v. *FEC*), of the Act and Sections 73.1940–44 of the Commission's rules—political broadcasting; (2) Section 507 of the Act and Section 73.4180 of the Commission's rules—payment disclosure; (Section 507 of the Act states that "Any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station must, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station."). The requirement, in industry parlance, addresses "payola" and "plugola." Payola occurs when a station fails to announce the receipt of something valuable in return for the inclusion of material in a broadcast. Plugola describes a situation in which a station fails to identify an outside business interest of the licensee, its parent, its affiliates, or an employee in the broadcast of particular materials.) (3) Section 508 of the Act—prohibited contest practices; (Section 508 of the Act addresses prohibited practices in contests of knowledge, skill, or chance. Under the Act, it is unlawful for any person, with intent to deceive the listening or viewing public, to supply to any contestant in a purportedly *bona fide* contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.) (4) Section 317 of the Act and Section 73.1212 of the Commission's rules—sponsorship identification (Section 317 of the Act and the Commission's rules state that all matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, must announce that such matter is paid for or furnished by the paying party.); (5) Section 1335 of Title 15 and Section 73.4055 of the Commission's rules—cigarette advertising; (Section 1335 of Title 15 of the U.S. Code, and the Commission's implementing regulations, makes it illegal to advertise cigarettes and little cigars on any medium of electronic communication subject to the Commission's jurisdiction. Thus, application of this rule to DAB is statutorily required.) and (6) Section 73.1208 of the Commission's rules—broadcast of taped or recorded material. Under Section 73.1208, any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, must be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public. The purpose of this rule is to avoid public confusion by informing the listening audience that the material presented is not being broadcast in real time. However, we sought comment on how such requirements should be applied to multicast services and whether the requirements apply to subscription services.

63. In its comments, PIC outlines certain areas in which the Commission should take action to ensure digital radio stations adequately serve the public interest. Specifically, PIC promotes the following six principles: (1) Free, over-the-air radio is a vital national interest that must be preserved and protected for civic, public safety, informational, and cultural reasons; (2) broadcasters must add as much additional capacity for the provision of new and independent voices or for serving underserved communities as they add for other purposes, such as offering commercial services that increase format diversity or subscription services; (3) radio must use digital technology to improve its offering of emergency information to all audiences, including those listening to subscription services, no later than it deploys other new services; (4) core statutory obligations must apply to all newly-created digital channels, and need modest alteration for a digital environment; (5) benefits that accrue to digital audio broadcasters must be accompanied by specific public interest obligations enforced through Commission rules and renewal processing guidelines; and (6) the Commission must ensure that

technology advancements support a broader benefit to the public. For example, PIC suggests that a broadcaster's statutory obligations should apply to all DAB streams (*i.e.*, free, subscription, and multicast streams). PIC also recommends that the Commission develop a flexible "menu" of additional public interest obligations and impose such obligations when a broadcaster chooses to implement subscription or other non-advertising based services. PIC advocates that this menu should place the highest priority on offering capacity for audio programming to non-affiliated noncommercial programmers, "small disadvantaged businesses," and commercial programmers serving underserved audiences. The menu should also include options to offer additional news and public affairs programming, and to offer public interest data services. WRAL–FM suggests that all radio and television stations should be required to meet certain minimum standards of public interest performance. It states that a voluntary code of conduct should be adopted to encourage higher than minimum standards for the broadcast industry and all stations should be required to report quarterly on their public interest activities.

64. NAB states that existing public interest obligations generally should apply to hybrid radio stations. NAB asserts, however, that it is premature for the Commission to impose more specific or additional public interest obligations on new multicast audio services or on datacasting services. NAB argues that the proposals made by PIC lack justification, are impracticable and overly burdensome, and present a number of policy, statutory and constitutional problems. With regard to subscription services specifically, NAB notes that the Commission has in the past declined to impose traditional "broadcast type" public interest obligations on subscription services (including video and audio program services), especially when those services are in their nascent stage of development. The NAB, citing *Subscription Video*, asserts that the Commission has declined to impose traditional broadcast regulations on subscription services carried on FM subcarrier frequencies, such as background music programs. NAB argues that the Commission should refrain from applying the various "broadcast type" public interest requirements to IBOC radio subscription services, at least until those services, if any, have matured. In any event, NAB states that this proceeding, which is focused on radio stations' implementation of IBOC, is not the proper vehicle for rewriting the Commission's broadcast public interest regulations that apply to both television and radio stations. NAB states that the proposals made by PIC and other commenters are being specifically, thoroughly, and more properly addressed in one or more pending proceedings focusing on broadcasters' public interest obligations.

65. We conclude that applying statutory and regulatory public interest requirements currently imposed on analog radio to digital radio is both necessary and the proper course of action. Specifically, the following requirements apply: (1) Political broadcasting; (2) payment disclosure; (3) prohibited contest practices; (4) sponsorship identification; (5) cigarette advertising; and (6) broadcast of taped or recorded material. Further, we will impose these requirements on all free over-the-air digital audio programming streams. The application of these requirements to subscription services is addressed in the *Second Further Notice of Proposed Rulemaking*, below.

66. Additionally, radio stations operating in a digital format must comply with all other public interest obligations applicable to radio broadcasters while operating in that mode. That is, a radio station providing digital audio programming service analogous to the analog audio service subject to regulation by the Commission must comply with such regulations that apply to that service, unless otherwise specified or clarified in this *Second Report and Order*. The Commission's station log and public file requirements, under Section 73.1820 and Sections 73.3526 and 73.3527, respectively, are some of the rules that apply in this context. Other statutory requirements and Commission regulations that apply to DAB, but need further explanation, are discussed below. We again remind broadcasters of the importance of meeting their existing public interest obligations and encourage them to increase public disclosure of the ways in which they serve the public interest.

67. While we move forward and apply existing public interest obligations to all free digital broadcast streams, we will not adopt new "public interest" requirements in this *Second Report and Order*. The commenters have raised important and complex issues concerning how broadcasters' public interest obligations should be tailored to the new radio services made possible through digital technology. Given the substance and scope of the proposed requirements, we conclude that it is best to defer consideration of any new public interest obligations (of the type envisioned by PIC, for example) so that we can, instead, promptly establish basic operational requirements in this proceeding. Radio stations using IBOC DAB technology, at this stage in the conversion process, are generally offering basic hybrid service where the digital signal replicates the programming of the analog signal. Thus, for the immediate future, we do not expect novel public interest problems to arise in this context.

68. The Commission will issue an annual report as to how the new digital radio services are being rolled out, whether multicast streams are being offered, and the extent to which programming on digital radio and on the multicast streams are fostering the services described in paragraph 37. We will obtain data for the report by periodically surveying digital audio broadcasters as to the status of their new services.

b. Station Identification

69. Under Section 73.1201 of the Commission's rules, broadcast station identification announcements must be made at the beginning and end of each time of operation, and as close to the hour as feasible, at a natural break in programming. Official station identification consists of the station's call letters immediately followed by the community or communities specified in its license as the station's location. The name of the licensee or the station's frequency or channel number, or both, as stated on the station's license may be inserted between the call letters and station location. In the *DAB FNPRM*, we sought comment on whether the station identification rules should apply to all digital audio content of a radio station. Specifically, we sought comment on how a station should identify audio channels other than the main channel. We asked whether there should be separate call letters for separate streams. We also sought comment on how any proposed rule should differ, if at all, for AM radio stations. There are rules for simultaneous AM (535–1605 kHz) and expanded band AM (1605–1705 kHz) broadcasts. If the same licensee operates an AM broadcast station in the 535–1605 kHz band and an AM broadcast station in the 1605–1705 kHz band with both stations licensed to the same community and simultaneously broadcasts the same programs over the facilities of both such stations, station identification announcements may be made jointly for both stations for

periods of such simultaneous operations.

70. PIC states that clearly understandable station identification rules, differentiating between multiple channels offered by the same licensee, and identifying the owner and location of the owner of the station, are necessary to allow the public to identify the source of the programming. It further states that the Commission should expand the call letters that a station uses to identify itself to allow listeners to easily remember which station and channel they are tuned. PIC adds that call letters are an important mechanism the public and the Commission use to identify particular broadcast streams, especially in the indecency context.

71. iBiquity argues against any proposal to create a separate station identification requirement associated with digital broadcasts. iBiquity argues that because hybrid radio stations (that do not multicast) broadcast identical programming throughout the day, there is no need for additional identification requirements. iBiquity asserts that broadcasting a separate digital call sign would require significant system and equipment modifications that will deter conversions to digital broadcasts.

72. The SBAs state that multicast programming streams should not be subject to station identification requirements. They argue that such requirements are unnecessary for listener recognition and Commission enforcement efforts. A radio station will voluntarily identify its channel position to listeners to develop market recognition. According to the SBAs, stations now identify themselves, their call sign, identifier slogan, community of license and dial position (*e.g.*, "Z105.3") far more often than the Commission's rules require. They assert that further station identification requirements, which reduce broadcast flexibility, are not needed to ensure listener recognition of particular broadcast channels. Additionally, with new digital technologies, the call letters of the licensee can be embedded into the bit-stream of a channel. Thus, the Commission will have a means to easily identify a station and monitor its compliance with broadcast rules. The SBAs posit that DAB technology permits a visual identification on all receivers (through an identification included in the transmitted bitstream), eliminating the need for an hourly aural identification.

73. We find that station identification requirements for DAB stations are necessary to facilitate public participation in the regulatory process, a key element in the Commission's supervision of broadcast licensees. Accordingly, we will implement the following regulations. First, both AM and FM stations with DAB operations will be required to make station identification announcements at the beginning and end of each time of operation, as well as hourly, for each programming stream. Second, proper identification consists of the station's call letters followed by the particular program stream being broadcast and the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion. Third, a radio station operating in DAB hybrid mode must identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. This requirement can be met through auditory means (*i.e.*, voiceovers), textual means (*i.e.*, datacast text appearing on the receiver's readout), or any other reasonable means of communication. As stations convert to a digital format and elect to provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming, as well as the particular program stream being broadcast, becomes increasingly important, both for listeners and for stations themselves. These policies and rules are similar to those adopted by the Commission for DTV stations and support our goal of applying similar rules to similarly situated broadcasters.

c. Emergency Alert System

74. The current emergency alert system ("EAS") requirements are codified in part 11 of the Commission's rules and, *inter alia*, mandates the delivery of a "Presidential message" in the case of a national emergency. Along with its primary role as a national public warning system, EAS and other emergency notification mechanisms, are part of an overall public alert and warning system, over which the Federal Emergency Management Agency ("FEMA") exercises jurisdiction. EAS use as part of such a public warning system at the state and local levels, while encouraged, is merely voluntary.

75. Section 73.1250 of the Commission's rules further specifies the substance and scope of the emergency information being broadcast. Under our rules, and if requested by government officials, a station may, at its discretion, and without further Commission authorization, transmit emergency point-to-point messages for the purpose of requesting or dispatching aid and assisting in rescue operations. If EAS is activated for a national emergency while a local area or state emergency operation is in progress, the national level EAS operation must take precedence. Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to the following: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gasses, widespread power failures, industrial explosions, civil disorders and school closing and changes in school bus schedules resulting from such conditions. AM stations may, without further Commission authorization, use their full daytime facilities during nighttime hours to broadcast emergency information when necessary for the safety of life and property, in dangerous conditions of a general nature, and when adequate advance warning cannot be given with the facilities authorized. All activities must be conducted on a noncommercial basis, but recorded music may be used to the extent necessary to provide program continuity. In the *DAB FNPRM*, we tentatively concluded that Section 73.1250 should apply to all audio streams broadcast by a radio station because the emergency information mandate can only be fulfilled if it is broadly applied.

76. The SBAs state that it is in the public interest to extend the emergency alert system to all audio streams broadcast by a radio station. NPR states that each free over-the-air audio program service should participate in the EAS system. Using relatively inexpensive distribution amplifiers and switching devices, NPR states that radio stations should be able to carry EAS or other emergency information virtually instantaneously via each free over-the-air program channel. However, NPR does not believe stations should be compelled to offer additional, unspecified "emergency" or other services as a condition to offering any data services. NAB argues that any questions regarding EAS equipment requirements for DAB should be set aside until a later date.

77. Subsequent to the release of the DAB FNPRM, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on rule changes for the emergency alert system. In that

proceeding, the Commission asked how the EAS system can be improved to be a more effective mechanism for warning the American public of an emergency. The action originated, in part, from recommendations of the Media Security and Reliability Council (an FCC Advisory Committee) and the Partnership for Public Warning. The Commission specifically sought comment on IBOC DAB and how the EAS system should apply to additional digital multicast programming streams. In November 2005, we revised our Part 11 EAS rules to apply to all radio stations operating in a digital mode and required such stations to air all national EAS messages on all audio streams, including subscription services. We found that all listeners should be informed of critical emergency information regardless of which audio stream they are listening to. We also clarified that if DAB stations choose to participate in state and local EAS activations, they must comply with Part 11. The Commission stated that such rules will become effective on December 31, 2006.

78. With regard to Section 73.1250, we note that a digital simulcast of an analog radio signal will, by virtue of the IBOC system design, be transmitting EAS information. Thus, listeners of the free digital simulcast will be able to access important emergency information per the existing requirements. As for multicast digital audio programming streams, we will apply the mandates of Section 73.1250 to all DAB audio streams in accordance with the revisions made to our Part 11 requirements. The public benefit of the Commission's emergency information requirements can only be realized if the rule is applied in this manner.

d. Radio Reading Services

79. Radio reading services for the blind ("RRS") have been one of the critical public interest services provided by radio stations and others across the country. Radio reading services are conducted by nonprofit organizations that read printed materials over electronic media for persons who are visually impaired. Radio reading services operate on FM radio subcarrier channels, usually under a leasing arrangement. Alternatively, RRS use cable television systems, a television station's second audio program ("SAP"), or the main channel of an AM or FM radio station. RRS represents the most frequent use of subcarrier channels on noncommercial stations. In 1983, the Commission held that public radio stations, subject to Section 399B of the Act, using subcarriers for remunerative activities must ensure that neither existing nor potential RRS are diminished in quality or quantity by the pursuit of commercial subcarrier undertakings. The Commission held that a station using one of its subcarriers for commercial purposes would be obliged to accommodate RRS on its other subchannel to ensure the availability of alternative subchannel capacity for such services. In the *DAB R&O*, we raised concerns about the level of interference to analog SCA services and its potential impact on RRS. In the *DAB FNPRM*, we sought further comment on measures to protect established SCA services from interference.

80. *Protecting Analog Radio Reading Services From Interference.* According to iBiquity, previous field tests presented to the Commission and the NRSC demonstrate that, except in limited circumstances, DAB stations operating on second-adjacent channels will not cause harmful interference to analog radio reading services and other SCA services. iBiquity asserts that since the scaling of the HDC codec to obtain additional capacity for multicasting or datacasting only impacts the audio of the main channel signal, and not the bandwidth occupancy, it cannot change the interference potential from the digital signal. Although using the extended hybrid mode increases the bandwidth occupancy, it extends inward toward the host signal rather than outward toward adjacent channel stations. Thus, iBiquity argues the use of the extended hybrid mode cannot increase interference to adjacent channel SCA signals. iBiquity states that although the extended hybrid mode could possibly increase the potential for interference to the host station's existing analog SCA services, the host station has the ability to address this situation.

81. In 2002, NPR commissioned a study to estimate the number of listeners potentially affected by additional interference from IBOC in the top 16 radio markets. The results show that, on average, additional interference from IBOC could affect 2.6 percent of eligible radio reading service receivers within an FM station's service area. Harris points out that the NPR study used mathematically averaged receiver performance data to estimate interference potential in the top 16 radio markets. Harris emphasizes that actual interference is not widespread, and that any possible degradation to radio reading services may be ameliorated, at least in part, through antenna alignment, substitution of a higher quality analog receiver, or carrying the programming on a digital SCA channel. Harris states that it will be testing the use of the extended hybrid digital system to provide for a digital transition of RRS. Harris recommends that the Commission adopt and enforce the revised FM RF mask proposed by iBiquity to further mitigate interference to SCA services, other digital services, and second adjacent channel analog FM services.

82. These RR Services provide tremendous value and we wish to encourage their development in a digital environment. Based on the record, it does not appear that interference generated by IBOC is likely to cause significant harm to analog SCA reading services. Nevertheless, the Commission staff will act on complaints in the rare cases in which interference is shown to cause a problem. In the meantime, we encourage NPR and other parties to continue independent testing that will provide us with data on possible interference in particular circumstances in specific areas. We will defer considering Harris' recommendation on the RF mask until such test results are made available.

83. *Digital Radio Reading Services.* IAAIS urges the Commission to adopt rules requiring digital radio stations to carry digital RRS. IAAIS essentially argues that before any radio station offers income generating secondary audio streams, it should be required to first provide digital bandwidth for RRS. IAAIS suggests that digital RRS will be best accommodated on the extended hybrid mode where the IBOC codec can easily process human speech. IAAIS additionally states that the digital information sent to radios can be accessed only after authorization, thus protecting the reading service copyright exemption for use of the thousands of print materials read aloud. iBiquity opposes IAAIS's request that the Commission require digital radio stations to offer capacity for RRS. iBiquity asserts that the radio reading services do not need a dedicated 20 or 24 kbps channel to match their current service. iBiquity indicates that high quality "voice" channels can be attained using 8 or 10 kbps codecs designed for those low bit rates. In some cases, those codecs can support voiceover programming with background music. Although this class of codec is not designed for higher quality music, iBiquity asserts that high quality music programming would be beyond the mission of the reading service stations. iBiquity states that it will identify a suitable solution that can function at 12 kbps. NPR asserts that it is inappropriate to consider IAAIS's proposals at this stage of the DAB

conversion process because more testing of digital RRS needs to be undertaken before regulations are considered. We decline to impose a digital RRS requirement, or place conditions of the type suggested by IAAIS, on radio stations at this time. The Commission does not require radio stations to offer analog RRS and there is no substantial evidence in the record supporting enhanced RRS requirements for DAB. Moreover, we find that any type of RRS requirement would run counter to our flexible bandwidth policy. However, we reiterate our recognition of the value of such services and encourage their deployment in the digital environment. We also decline to adopt new policies addressing the interplay between remunerative services offered by NCEs and the availability of RRS, similar to the requirements in Section 73.593 of the Commission's rules, because the business and programming decisions of noncommercial stations are not yet known. This will be an issue addressed in a DAB periodic review in the future.

84. *Receiver Requirements.* IAAIS urges the Commission to require all digital receivers to include RRS capabilities. In addition, IAAIS asks the Commission to require tactile controls and other accessibility features to be built into every digital receiver. iBiquity opposes new requirements for radio equipment manufacturers, arguing that it would impair the development of DAB. It further asserts that the imposition of new and potentially expensive regulations on the design and features of digital receivers will create a strong disincentive for manufacturers to introduce digital devices, particularly if these accessibility features would require significant development work or redesign of radio receivers. According to iBiquity, these regulations would not only increase the costs of digital radio for consumers, but it also would slow the introduction of digital receivers and the IBOC transition.

85. Our goal is to see RRS services deployed. As noted below, voluntary industry efforts in this regard are continuing and show substantial promise. In addition, reception devices for analog RRS are available as stand-alone equipment for those with visual impairments. Such consumers may subscribe to RRS services and be able to obtain an RRS receiver if they so desire. Consumer electronics manufacturers, however, are under no obligation to build analog audio receivers with RRS capabilities nor should they be required to manufacture IBOC receivers with RRS functionalities. IAAIS's proposed mandates would make it more costly to produce DAB receivers, which in turn, would make it more expensive for consumers to purchase equipment. We note that there is no express statutory provision requiring such capabilities. IAAIS relies on Section 255 of the Telecommunications Act of 1996 as the basis for some of its requests. This section codifies the responsibilities of telecommunications manufacturers and service providers to meet the needs of the disabled. This section, however, applies to entities regulated under Title II of the Act. It does not impose any requirements on broadcasters regulated under Title III of the Act or on manufacturers of broadcast -related equipment. Moreover, we recognize that any regulation of broadcast reception equipment is subject to the limitations identified in recent court precedent. Although we will not require RRS capability at this time, we do not rule out the possibility of revisiting the issue in the future should the need arise.

86. *Voluntary Industry Efforts.* iBiquity states that it has been working with the IAAIS to ensure that radio reading services are accommodated as radio stations convert to digital. iBiquity notes that it is developing a conditional access solution for the IBOC system to ensure that reading services are able to maintain their copyright exemption. iBiquity is supplying software, hardware and laboratory facilities to facilitate additional testing to determine the appropriate low bit rate codec that can be used for reading services. iBiquity states that even though it has engineered the HDC codec to function at bit rates low enough to accommodate reading services, it has consistently assured the reading services that the IBOC system will operate compatibly with any low bit rate codec the reading services select for inclusion in reading service devices. NPR states that it is exploring the use of the extended hybrid spectrum for the digital transmission of radio reading services. Pursuant to a Corporation for Public Broadcasting grant, NPR conducted full perceptual testing of the latest low- and very low-bit rate digital audio coders that may be used for radio reading services audio. NPR plans additional tests to measure the coverage capabilities of extended hybrid operation. With predictions that the prevalence of visual disabilities will increase markedly during the next 20 years as the U.S. population ages, NPR expects NCE stations to continue leading the way in offering assisted living services, including radio reading services for the "print-impaired." We are encouraged by the voluntary steps taken by iBiquity and NPR, so far. We urge these parties to work with IAAIS to forge a resolution that would benefit all parties involved.

2. Operating Hours

87. In the *DAB FNPRM,* we asked how the conversion to DAB would affect the "minimum hours of operation" requirement in Sections 73.1740 and 73.561 Under the relevant rules, AM and FM commercial stations are required to operate two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday. NCE FM stations are required to operate at least 36 hours per week, consisting of 5 hours of operation per day on at least 6 days per week. The SBAs state that multicasting changes the way radio stations operate. It states, for example, that the Commission may want to support multicast streams, which do not operate two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, in order to promote more digital multicasting on the air. We find merit in the SBAs arguments and will permit radio stations to set their own schedule for DAB hybrid mode broadcasts as well as additional multicast streams at this stage of the DAB conversion process. We note that multicasting is at the discretion of the licensee stations; therefore they should be allowed to schedule separate streams as they wish. This flexible policy will encourage more radio stations to experiment with new programming services that interest the public. We will revisit this issue, if necessary, in future periodic reviews.

3. Territorial Exclusivity

88. In the *DAB FNPRM,* we sought comment on the application of Sections 73.132 and 73.232, the territorial exclusivity rules for AM and FM stations. Under these rules, no licensee of an AM or FM broadcast station shall have any arrangement with a network organization that prevents or hinders another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organization. This section does not prohibit arrangements under which the station is granted first call within its primary service area upon the network's programs. The SBAs states that changes will not be necessary to these

requirements due to the advent of DAB. With regard to these requirements, we note that the rules apply to the licensees themselves and not the content being broadcast. Due to the expansive language contained in the current requirements, and the pro-competition policies reflected therein, the territorial exclusivity rules apply to all free digital audio programming streams. Any novel issues that may arise from our decision here will be addressed on a case-by-case basis.

E. Technical Rules

1. AM Nighttime Operation

89. In the *DAB R&O*, we declined to authorize nighttime IBOC operation by AM stations because there were insufficient test results in the record to support that action. In 2004, NAB submitted its analysis of AM nighttime IBOC tests conducted by iBiquity and recommended that the Commission "extend the current interim authorization for IBOC service to permit nighttime AM broadcasts." On April 14, 2004, the Commission issued a Public Notice seeking comments on the NAB recommendations. Most of the comments received from broadcasters, such as the SBAs, support NAB's recommendation that the Commission extend current interim authorizations of IBOC service to nighttime AM broadcasts. Several other commenters, however, object to nighttime AM IBOC operations citing the potential for increased interference due to nighttime AM skywave propagation.

90. On balance, we find that the benefits of full-time IBOC operation by AM stations outweigh the slightly increased risk of interference. The studies performed by iBiquity and analyzed by NAB indicate that the greatest potential for interference occurs at the extremities of the nighttime coverage area of the desired station, primarily at locations where substantial interference from existing analog operations is already present. We do not anticipate increased interference within AM stations' core service areas. Furthermore, the interference management procedures established in the *DAB R&O* provide a mechanism whereby particular instances of interference can be readily resolved. Therefore, we will extend the permissible hours of IBOC interim operation for AM stations to include all hours during which a given station is currently authorized for analog operation, subject to the notification procedures established in the *DAB R&O*. In order to avoid unnecessary and repetitious notifications, we will not require those AM stations which have already notified the Commission of the commencement of daytime IBOC operation to file any further notification; authority for nighttime IBOC operation is automatically conferred upon those stations by the action taken herein. AM stations which file IBOC notifications with the Commission after the effective date of this *Second Report and Order* will be presumed to have commenced IBOC operation for all hours of currently authorized analog operation, unless the notification states otherwise. We note that many Class D AM stations are authorized for nighttime secondary operation with extremely low operating power, in some cases as low as one watt. In some cases, nighttime IBOC power may be so low as to render IBOC operation technically infeasible. Nighttime secondary operation for an AM station is operation with power less than 250 watts and antenna efficiency less than 241 millivolts per meter at one kilometer for one kilowatt input. We remind licensees that nighttime secondary analog operation by Class D AM stations does not carry any minimum operating schedule requirement, and that interim IBOC operation is entirely voluntary for all stations at the present time.

2. Dual Antennas

91. In the *DAB R&O*, we limited interim IBOC implementation to the systems that the NRSC had tested. With respect to FM antennas, the NRSC had tested a configuration in which the FM analog and digital signals were combined and fed into the same antenna. Consequently, FM stations implementing IBOC were initially required to use the single-antenna approach. Subsequent testing by NAB, however, showed that separate antennas could be used for the analog and digital FM signals within specified limits. NAB stated that the dual antenna approach is less costly for many FM stations, and may therefore encourage IBOC development. By *Public Notice*, we authorized FM stations to use dual antennas for IBOC pursuant to routine special temporary authorization (STA) procedures. We raised the issue of dual antennas for further comment in the *DAB FNPRM*. Commenters were unanimous in supporting the expansion of IBOC notification procedures to include dual antenna use, without the necessity of an STA request. We agree and accordingly authorize FM stations to implement IBOC without prior authority using separate antennas conforming to the criteria set forth in the *Dual Antennas Public Notice*. Stations must notify the Commission within ten days of the commencement of IBOC operations, consistent with the digital notification procedures already in place. In addition to the information required of all licensees initiating digital operations, FM licensees using dual antennas shall provide the following information: (1) Geographic coordinates, elevation data, and license file number for the auxiliary antenna to be employed for digital transmissions; and (2) for systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in 47 CFR73.317.

3. FM Translator and Booster Stations

92. An FM translator station is a station operated for the purpose of retransmitting the signals of an FM station or another FM translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude. An FM booster station is a station operated for the purpose of retransmitting the signals of an FM station by amplifying and reradiating such signals without significantly altering any characteristics of the incoming signal other than its amplitude. In the *DAB FNPRM*, we solicited comment on digital issues concerning FM translators and boosters. Commenters discussed the following seven issues: (1) Conversion of FM translator and booster stations to digital operation; (2) permissible uses of digital translator and booster stations; (3) use of FM translators and boosters to rebroadcast multiplexed audio streams; (4) use of dual output digital translators; (5) indefinite continuation of analog FM translator and booster station operation; (6) modifications of the currently permitted signal delivery methods for FM translators and boosters; and (7) requirements related to the simultaneous digital conversion of licensed main and FM translators and boosters. The latter issue garnered the most attention from interested parties, where most agreed that the Commission should not require simultaneous digital conversion of the primary station and its FM translators and boosters.

93. We will permit the use of digital translator and booster stations during interim DAB operations. However, we believe that a stronger record is necessary to address the complicated issues involved in the authorization of these facilities before adopting permanent rules for digital translator and booster stations. Pursuant to experimental authorization issued by the Commission, KCSN–FM and NPR

conducted field tests in the Los Angeles metropolitan area in December 2004 to evaluate KCSN–FM's signal coverage via mobile reception. NPR and the station attempted to evaluate IBOC DAB system coverage in terms of received signal level. The field tests evaluated reception availability and compared actual data to predictions using a computerized propagation model. NPR chose KCSN–FM to conduct these tests because the station operates the nation's first IBOC DAB booster which presents unique challenges for technical performance. The testing indicated that the booster generally increased the availability of KCSN–FM's digital signal, but that there were still coverage issues in certain service areas. We will not require the simultaneous conversion of the primary station and its FM translators and boosters. We do not want to overburden radio stations with more technical requirements than necessary as they commence digital operations.

4. TV Channel 6

94. Beginning approximately 20 years ago, NCE FM stations operating on channels 201 through 220 were required to protect channel 6 TV stations from adjacent channel interference based on the performance characteristics of analog TV receivers. In the *DAB FNPRM*, we sought comment on what, if any, rule changes are necessary to protect channel 6 TV stations from interference from digital radio operations, and if new rules are needed to protect channel 6 DTV stations. There are currently 58 licensed analog channel 6 full-service TV stations and 6 licensed analog channel 6 Class A TV stations. There are currently no licensed or authorized channel 6 digital TV or digital Class A TV stations.

95. NPR and Paul Delaney assert that due to the low signal strength of the IBOC digital signal, there is minimal potential for increased NCE FM interference to analog channel 6 TV stations. Additionally, both question the continued applicability of the existing TV channel 6 protection requirements in light of the transition to DTV where there will be few, if any, channel 6 TV stations, and where the use of digital receivers will provide increased immunity to adjacent channel FM interference. REC Networks concurs with NPR concerning the re-examination of the current NCE FM channel 6 protection requirements, but, it suggests that perhaps some protection of both analog and digital channel 6 TV stations may be appropriate for NCE FM IBOC hybrid operations.

96. We agree that the very low increase in power resulting from the addition of the IBOC digital signal likely will not result in any increased interference to analog channel 6 TV stations from NCE FM stations operating on FM channels 201–220, and that the DTV transition may render this issue moot. Therefore, no changes in Section 73.525 governing TV channel 6 protection are necessary at this time. The Commission will, however, initiate a separate proceeding to evaluate the existing NCE FM channel 6 TV protection requirements, and seek public input on their continued viability, following the completion of the DTV transition, a review of the immunity characteristics of DTV receivers, and the widespread deployment of DAB transmitting facilities.

5. Super-Powered and Short-Spaced Stations

97. Although this issue was not raised in the *DAB FNPRM*, Livingston Radio Company and Taxi Productions Inc. ("Livingston") urge the Commission to restrict the digital power levels for super-powered FM stations. A super-powered FM station is a station for which the power/antenna height combination exceeds the class limit set forth in 47 CFR § 73.211. Such stations were authorized before the current class limits were adopted, and have "grandfathered" status. Livingston asserts that super-powered stations cause more interference than stations that comply with class limits. Therefore, according to Livingston, IBOC operations by super-powered stations must be limited in order to avoid excessive interference to nearby stations on adjacent channels. Livingston urges the Commission "not to extend superpower privileges into the IBOC digital environment," and suggests determining digital signal power based on class maximum facilities. Similarly, Press Communications, LLC ("Press") suggests that the Commission adopt limits on IBOC operation by short-spaced FM stations.

98. Several commenters disagree with Livingston's proposal. WPNT, Inc., for example, states that ending the grandfathered status of super-powered stations would simply benefit some broadcasters at the expense of others. Cox Radio, Inc. and Bonneville International Corporation assert that termination of super-power status is outside the scope of this proceeding, and that the Commission would violate the Administrative Procedures Act if it were to adopt rules without first seeking comment from the public. We agree that the consideration of super-powered status is beyond the scope of this proceeding, and, therefore, decline to adopt special restrictions on digital operations by super-powered stations here. In any event, we do not see a compelling reason to restrict digital operations by short-spaced FM stations, as Press suggests. We will continue to evaluate any complaints of possible IBOC interference on a case-by-case basis as we stated in the *DAB R&O*.

6. Expansion of IBOC Notification Procedures

99. We are hereby changing the procedures for approving IBOC operations to allow broadcasters to take advantage of technical improvements as they develop, rather than waiting for Commission action and rules to do so. In the *DAB R&O*, we permitted radio stations to implement IBOC operations without prior authority, provided that the IBOC configurations were substantially the same as those tested by the NRSC. The IBOC DAB service is developing rapidly, with new modes of operation such as multicasting, datacasting, and dual antenna operation all commencing after the *DAB R&O* was adopted. As test results have been added to the record in this proceeding, the staff has sought comment and subsequently issued Public Notices authorizing IBOC operations that differ from the configurations originally tested by the NRSC. Stations wishing to implement multicasting or dual antenna operations have, however, been required to request prior authority to operate from the Commission. We believe that DAB will continue to evolve rapidly in tandem with modifications by iBiquity to the IBOC system. In the interests of efficiency, we delegate to the Media Bureau the authority to issue Public Notices, seek public input, and review the range of permissible IBOC operations as circumstances warrant. After appropriate notice and comment, the staff is authorized to act on delegated authority on implementing new IBOC notification procedures to cover new IBOC configurations. Expansion of the notification procedures will allow stations to implement digital operations without unnecessary delay.

7. Receivers

100. According to iBiquity, its systems provide extensibility in that the first-generation receivers are designed to operate both in the interim hybrid and in all-digital modes. In the *DAB R&O*, we stated that this is an area in which definitive evaluations can only be undertaken after we resolve a number of all-digital issues, such as issues relating to signal architecture. Recognizing the

flexibility of the IBOC model, and the possibility of new services, we stated that we will address receiver issues in more detail at a later date. We sought comment on whether the issues raised, and the policies proposed, in the *DAB FNPRM* require us to address receiver issues at this stage of DAB development. We asked, for example, how the adoption of a high quality audio requirement would affect receiver manufacturers. As noted above, we do not establish a high quality audio requirement. The commenters did not address the issue of receiver performance standards. Further, there is an open Commission proceeding concerning the adoption of receiver performance standards. Consequently, we believe that the public interest is better served by awaiting the outcome of that proceeding and will address DAB receiver issues, if necessary, in the future.

8. Patents

101. The iBiquity IBOC DAB system uses patented technologies. This requires IBOC licensees to pay licensing fees to the patent holders. The Commission stated in the *DAB R&O* that during the interim DAB operation period, we will monitor the behavior of the patent holders to determine if the required licensing agreements are reasonable and non-discriminatory and that we will seek additional public comment on this matter as required. In the *DAB FNPRM*, we sought further comment on iBiquity's conduct regarding licensing agreements in the interim DAB operating period. Although iBiquity has pledged to adhere to the Commission's patent policy, certain parties commented that iBiquity might resort to unreasonable and discriminatory licensing fees once DAB receivers have become widely available. We find that iBiquity has abided by the Commission's patent policy up to this point in the DAB conversion process. Therefore, we do not believe that it is appropriate at this time for us to adopt regulations governing IBOC licensing and usage fees. If we receive information that suggests we need to explore this issue further, especially in connection with the adoption of the NRSC–5 standard, we will take appropriate action at that time.

9. Other Technical Issues

102. In the *DAB FNPRM*, we raised for comment other technical issues relevant to the discussion of DAB operations, including (1) AM and FM definitional issues; (2) interference; (3) AM stereo; (4) operating power; and (5) predicted coverage for digital signals. We find that these issues have been sufficiently addressed in the *DAB R&O* to permit station authorization on an interim basis. Further evaluation of these issues is best undertaken in conjunction with the NRSC–5 standards review.

IV. International Issues

103. In the *DAB R&O*, the Commission stated that during the period of interim IBOC operation, all relevant international agreements will be reviewed and any necessary modifications will be addressed at a later date. In the DAB NOI, we noted that these matters are being informally addressed by the Commission's International Bureau ("IB") and asked what IB should focus on to expedite the rollout of DAB in the United States. The Commission has rules pertaining to FM broadcasting and international agreements relevant to the service. Specifically, Section 73.207 states that under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances provided in the Commission's rules. It also states that under the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances stated in the rule.

104. According to iBiquity, the International Bureau has appropriately analyzed the ability of the United States to implement IBOC consistent with the United States' treaty obligations to Canada and Mexico. The International Bureau also has held informal discussions with both the Canadian and Mexican governments concerning implementation of IBOC in the United States. iBiquity states that it supports these efforts and submits that the current process is adequately addressing the international requirements for implementing IBOC.

105. One commenter, Barry McLarnon, states that the current broadcast co-channel allocation rules are no longer adequate to prevent objectionable interference from operating hybrid AM IBOC radio stations. He argues that AM IBOC is not permissible under the terms of the U.S.-Canada bilateral agreement on AM broadcasting. Specifically, he asserts that AM IBOC interference is in contravention of the article in that agreement which states: "Classes of emission other than A3E, for instance to accommodate stereophonic systems, could also be used on condition that the energy level outside the necessary bandwidth does not exceed that normally expected in A3E. * * *." McLarnon asserts that the "necessary bandwidth" in this case is defined as 10 kHz and the hybrid AM IBOC system increases the occupied bandwidth of an AM station to approximately 28 kHz. He further asserts that the increased power is outside the necessary bandwidth of the AM signal and exceeds that normally expected in A3E. He also states that identical wording is used in the agreement between the U.S. and Mexico, and therefore, that agreement is also violated by any usage of the hybrid AM IBOC system.

106. All matters pertaining to the relevant international agreements, including the above contentions, are being addressed in the appropriate bilateral and multilateral fora. While we are optimistic that we will be able to resolve any outstanding issues with Canada and Mexico or other countries, these issues remain subject to ongoing negotiations. Therefore, until the negotiations are completed, we advise the radio industry that the following condition will be applied to stations operating with IBOC DAB:

> Operation with facilities specified herein is subject to modification, suspension or termination without right to hearing, as may be necessary to carry out the applicable provisions of the ITU Radio Regulations, the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 (Rio de Janeiro, 1981), or any bilateral or multilateral agreement(s) of the United States.

V. Order on Reconsideration

107. The Commission has before it three Petitions for Reconsideration of the *DAB R&O* in which the Commission selected IBOC as the sole digital technology for the terrestrial radio broadcasting service. More than three years ago, the Commission sought comment on an NRSC report documenting extensive laboratory and field tests of the FM IBOC system. iBiquity was the only developer to submit digital systems to the NRSC for evaluation. The NRSC FM report recommended that the Commission adopt iBiquity's FM system for DAB. On April 15, 2002, the NRSC filed its evaluation of iBiquity's AM hybrid system, recommending that the Commission adopt the system for daytime use pending further study under nighttime propagation conditions. Broadcast industry commenters, including small and large radio station owners, equipment manufacturers, and

receiver manufacturers expressed strong support for iBiquity's AM and FM systems, and both systems were subsequently adopted for interim use on a voluntary basis in the *DAB R&O*. For the reasons discussed below, we deny the petitions of the Amherst Alliance and other parties (collectively "Amherst") and of John Pavlica, Jr. We dismiss the petition of Glen Clark and Associates "Clark" as moot.

108. The Amherst Alliance has filed the following pleadings with the Commission: (1) A Petition for Reconsideration of the *DAB R&O* (filed October 25, 2002); (2) a Petition for Rulemaking (filed April 17, 2002); and (3) a request for Environmental Impact Statement (filed July 18, 2002). Specifically, Amherst claims that the Commission failed to act on a request filed by it and other parties for an environmental impact statement concerning the possible effects of IBOC, and on a petition by it and other parties for a new rulemaking on digital radio. Amherst also claims that the Commission should not have adopted IBOC until proceedings on blanketing interference and human exposure to electromagnetic radiation were resolved. NAB opposes Amherst stating that it "presents no basis for reconsideration of the *DAB R&O* and virtually no substance or support for its complaints." iBiquity states that Amherst offers no new information justifying any changes in the policies adopted by the Commission in the *DAB R&O* and is merely an attempt to delay IBOC. We agree with NAB and iBiquity that Amherst has not presented any arguments that were not already addressed and disposed of by the Commission in the *DAB R&O*. Moreover, we find that Amherst has not provided new evidence of the type necessary for the Commission to delay the introduction of IBOC and the offering of DAB to the public. Therefore, its Petitions for Reconsideration and Rulemaking are denied.

109. We also affirm our conclusion in the *DAB R&O* that the initiation of interim IBOC operations is categorically excluded from environmental processing and that the procedure requiring licensees to certify compliance with existing RF exposure standards satisfies any environmental requirements. Accordingly, preparation of an environmental impact statement is unnecessary in the context of IBOC operations. We reject the argument that the denial of Amherst's Request for Environmental Impact Statement was not "officially" denied because the denial was not listed in the ordering clause of the *DAB R&O*. Where the text of an order is clear, the omission of the action from the ordering clause is not determinative.

110. *John Pavlica, Jr. petition*. Pavlica states that the iBiquity IBOC systems cause "substantial and nearly continuous interference" to existing AM and FM stations. According to Pavlica, the Commission should consider options such as better receiver technology before adopting any digital radio system. Pavlica suggests a one-year period for evaluating alternatives to IBOC. Pavlica also expresses concern about iBiquity's status as the sole source of proprietary IBOC technology. All of Pavlica's contentions were thoroughly addressed in the *DAB R&O*. Beyond the simple assertion that IBOC causes extensive interference, the petition offers no technical support for this characterization of IBOC operation. In sharp contrast, the NRSC spent several years crafting IBOC tests, the results of which are documented in detailed comments. The comparison of alternatives for introducing digital technology to the AM and FM bands that Pavlica calls for began with the *DAB NPRM* in 1999, and concluded with the selection of IBOC in 2002 based on a substantial record. It is well established that the Commission does not grant reconsideration for the purpose of debating matters on which it has already deliberated.

111. *Other Pleadings*. In two letters, Amherst suggests that IBOC operations may cause interference to the AMBER alert system. In participating states, AMBER alerts are broadcast as part of the Emergency Alert System. EAS messages are transmitted via the main analog radio signal. Amherst offers no support for the allegation. Test results presented in the NRSC AM and FM reports demonstrate that analog radio signals will not be subject to interference that would impair EAS transmissions. Any interference from IBOC is likely to occur at the fringes of a station's normally protected coverage area, where the analog signal quality is poor. In such circumstances, analog listeners are likely to tune to another radio station with a stronger signal, particularly in the event of an emergency. Amherst provides no countervailing evidence that IBOC will interfere with AMBER alerts, and no reason to delay IBOC implementation.

112. In a petition for rulemaking filed January 24, 2003, Kahn Communications, Inc. requests that the Commission initiate a new proceeding to revise procedures for evaluating new technology. Kahn also requests that the Commission stay the *DAB R&O* and reevaluate its adoption of IBOC in light of any resulting policy revisions. To the extent that Kahn's filing is a petition for reconsideration of the *DAB R&O*, the petition is untimely. Kahn provides no justification for failing to file timely comments in this proceeding. Moreover, we do not find that the public interest would be served by further delay of the long-contemplated digital conversion of the terrestrial radio service. Therefore, we will not consider Kahn's untimely comments in this proceeding.

VI. Procedural Matters

A. Filing Requirements

113. *Ex Parte Rules*. The *Second Further Notice of Proposed Rulemaking* in this proceeding will be treated as a "permit-but-disclose" subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

114. *Comments and Reply Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing

address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

115. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bill.cline@fcc.gov*. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488–5300 or (800) 378–3160; by e-mail at *fcc@bcpiweb.com*; or via their Web site at *http://www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

116. *Additional Information.* For additional information on this proceeding, contact Ann Gallagher, *Ann.Gallagher@fcc.gov*, of the Media Bureau, Audio Division, (202) 418–2716 or Brendan Murray, *Brendan.Murray@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

B. Initial and Final Regulatory Flexibility Analysis

117. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). By the issuance of this *Second Further Notice of Proposed Rulemaking*, we seek comment on the impact our suggested proposals would have on small business entities.

118. *Act.* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Second Report and Order and First Order on Reconsideration.*

C. Paperwork Reduction Act Analysis

119. The *Second Report and Order, First Order on Reconsideration*, and *Second Further Notice of Proposed Rulemaking* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission will publish a separate **Federal Register** Notice seeking public comments on the modified information collection requirements. Therefore, OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding once the **Federal Register** Notice is published. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

120. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov* and to Jasmeet K. Seehra, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Jasmeet_K._Seehra@omb.eop.gov*, or via fax at 202–395–5167. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov*.

Initial Regulatory Flexibility Analysis

121. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice of Proposed Rulemaking*. The Commission will send a copy of this

entire *Second Further Notice of Proposed Rulemaking* ("FNPRM"), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the *Second Further Notice of Proposed Rulemaking* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

122. *Need For, and Objectives of, the Proposed Rules.* The *Second FNPRM* has been initiated to obtain further comments concerning the development and implementation of terrestrial digital audio broadcasting. Because free over-the-air terrestrial broadcasting is in the public interest, and because spectrum is a limited resource, in the *Second FNPRM* the Commission seeks comment on how to limit ancillary subscription services provided by radio stations converting to the IBOC DAB format so that terrestrial radio broadcasting remains an essentially free over-the-air service. The Commission also seeks comment on *inter alia*, the application of several statutory and regulatory public interest requirements to subscription services.

123. *Legal Basis.* The authority for this *Second Further Notice of Proposed Rulemaking* is contained in Sections 1, 2, 4(i), 303, 307, 312(a)(7), 315, 317, 507, and 508 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, 312(a)(7), 315, 317, 508, and 509.

124. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

125. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6.5 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

126. *Electronics Equipment Manufacturers.* The rules adopted in this proceeding will apply to manufacturers of DAB receiving equipment and other types of consumer electronics equipment. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment. Under this standard, firms are considered small if they have 1,000 or fewer employees. Census Bureau data for 2002 indicate that, for that year, there were a total of 1,041 establishments in this category. Of those, 1,023 had employment under 1,000. Given the above, the Commission estimates that the great majority of equipment manufacturers affected by these rules are small businesses.

127. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The proposed rules on subscription services may impose additional reporting or recordkeeping requirements on existing radio stations, depending upon how the Commission decides to limit subscription services. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

128. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

129. In the *Second Report and Order*, the Commission permits radio stations to offer high quality digital radio signals, multicast digital audio programming streams, and datacasting. In the *Second Further Notice of Proposed Rulemaking*, the Commission seeks comment on what limitations on ancillary subscription services are necessary and appropriate to ensure the viability of free over-the-air radio broadcasting. This is an issue of first impression for the Commission; there is no history that indicates whether limits on ancillary subscription services will be adverse or beneficial to small businesses. Therefore, we make no judgment on whether limits on ancillary subscription services will adversely affect small business. We welcome commenters to address whether limits on ancillary subscription services will have any adverse effects on small businesses.

130. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Final Regulatory Flexibility Analysis

131. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rule Making*. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

132. *Need For, and Objectives of, the Proposed Rules.* The policies and rules set forth herein are required to ensure a smooth conversion of the nation's radio system from an analog to a digital format. In this *Second Report and Order*, the Commission: (1) Reaffirms its commitment to providing radio broadcasters with the option of utilizing DAB technology; (2) announces public policy objectives resulting from the introduction of DAB service, such as more diverse programming serving local and community needs; (3) provides radio stations with the ability to offer more channels of programming and

datacasting; (4) adopts technical service rules for DAB, such as the authority to commence AM nighttime service and dual antenna operation; (5) adopts operational requirements for digital radio stations, such as emergency alert systems, station identification, and operating hours. In the *First Order on Reconsideration*, the Commission dismisses or denies outstanding Petitions for Reconsideration and Rulemaking which questioned the adoption of iBiquity's IBOC technology for use by DAB stations.

133. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* None.

134. *Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

135. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6.5 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

136. *Electronics Equipment Manufacturers.* The rules adopted in this proceeding will apply to manufacturers of DAB receiving equipment and other types of consumer electronics equipment. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment. Under this standard, firms are considered small if they have 1,000 or fewer employees. Census Bureau data for 2002 indicate that, for that year, there were a total of 1,041 establishments in this category. Of those, there were 1,023 that had employment under 1,000. Given the above, the Commission estimates that the great majority of equipment manufacturers affected by these rules are small businesses.

137. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rules adopted in this *Second Report and Order* will impose additional reporting or recordkeeping requirements on existing radio stations. First, the Commission applies the existing statutory and regulatory obligations to all free digital radio streams, thus increasing the scope of a radio station's existing compliance requirements. Second, the Commission's policies will increase the amount of information that must be kept in a radio station's public file. Finally, there will be new forms generated by the Commission's Media Bureau that must be processed by each radio station that elects to offer IBOC DAB.

138. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

139. In this *Second Report and Order*, the Commission (1) Reaffirms its commitment to providing radio broadcasters with the option of utilizing DAB technology; (2) announces public policy objectives resulting from the introduction of DAB service, such as more diverse programming serving local and community needs; (3) provides radio stations with the ability to offer more channels of programming and datacasting; (4) adopts technical service rules for DAB, such as the authority to commence AM nighttime service and dual antenna operation; (5) adopts operational requirements for digital radio stations, such as emergency alert systems, station identification, and operating hours. This adoption of a flexible use policy for DAB, will allow radio stations to transmit high quality digital audio, multiplexed digital audio streams, and datacasting, which should allow broadcasters to meet the policy objectives. In addition, rather than require all radio stations to convert to a digital format by a date certain, the Commission will allow marketplace forces to dictate the conversion process. However, each radio station broadcasting in the IBOC format will have to provide one free digital radio programming stream of audio quality comparable to that of the analog signal to the public. With regard to technical requirements, the Commission satisfies the interests of digital AM stations by permitting them to operate during nighttime hours; it also lessens the burden of all digital radio broadcasters by permitting the use of cost-effective dual antennas to transmit digital radio programming. Because the Commission is allowing the marketplace to drive adoption of the transition to digital broadcasts, the rules and policies set forth herein impose no adverse economic impact. This flexibility allows small entities to explore the economic choices on their own, and therefore significant alternatives to these rules and policies are unnecessary.

140. *Report to Congress.* The Commission will send a copy of the *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order,

First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

141. Accordingly, *It is ordered,* pursuant to the authority contained in Sections 1, 2, 4(i), 303, 307, 312, 315, 317, 507, and 508 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, 312, 315, 508, and 509, *this Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking* IS ADOPTED.

142. *It is further ordered* that the rules contained herein are : Effective September 14, 2007, except for the rules in 47 CFR 73.404(b), 47 CFR 73.404(e), and 47 CFR 73.1201, which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

143. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chief, Media Bureau, is granted delegated authority to issue Public Notices and consider and grant routine petitions and waivers of the Commission's DAB technical requirements, resolve interference disputes, amend licensing requirements and generate new forms, and update IBOC notification procedures.

144. *It is further ordered* that the Petition for Reconsideration filed October 25, 2002, by the Amherst Alliance is denied.

145. *It is further ordered* that the Petition for Rulemaking filed April 17, 2002, by the Amherst Alliance is denied.

146. *It is further ordered* that the Petition for Reconsideration filed December 10, 2002 by Glen Clark and Associates is dismissed.

147. *It is further ordered* that the Petition for Reconsideration filed January 13, 2003, by John Pavlica Jr. is denied.

148. *It is further ordered* that the Petition for Rulemaking filed January 24, 2003, by Kahn Communications, Inc. is dismissed.

149. *It is further ordered* that the untimely Petition for Reconsideration filed by Kahn Communications, Inc. is denied.

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

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

List of Subjects in 47 CFR Part 73

Digital television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed 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.

■ 2. Subpart C is redesignated as Subpart D

■ 3. New Subpart C is added to read as follows:

Subpart C—Digital Audio Broadcasting

Sec.

Subpart C—Digital Audio Broadcasting

§ 73.401 Scope.

This subpart contains those rules which apply exclusively to the digital audio broadcasting (DAB) service, and are in addition to those rules in Subparts A, B, C, G and H which apply to AM and FM broadcast services, both commercial and noncommercial.

§ 73.402 Definitions.

(a) *DAB.* Digital audio broadcast stations are those radio stations licensed by the Commission and use the In-band On-channel ("IBOC") system for broadcasting purposes.

(b) *In Band On Channel DAB System.* A technical system in which a station's digital signal is broadcast in the same spectrum and on the same channel as its analog signal.

(c) *Hybrid DAB System.* A system which transmits both the digital and analog signals within the spectral emission mask of a single AM or FM channel.

(d) *Extended hybrid operation.* An enhanced mode of FM IBOC DAB operation which includes additional DAB subcarriers transmitted between the analog FM signal and the inner edges of the primary DAB sidebands.

(e) *Primary AM DAB Sidebands.* The two groups of hybrid AM IBOC DAB subcarriers which are transmitted 10 to 15 kHz above carrier frequency (the upper primary DAB sideband), and 10 to 15 kHz below carrier frequency (the lower primary DAB sideband).

(f) *Multicasting.* Subdividing the digital bitstream into multiple channels for additional audio programming uses.

(g) *Datacasting.* Subdividing the digital bitstream into multiple channels for additional data or information services uses.

§ 73.403 Digital audio broadcasting service requirements.

(a) Broadcast radio stations using IBOC must transmit at least one over-the-air digital audio programming stream at no direct charge to listeners. In addition, a broadcast radio station must simulcast its analog audio programming on one of its digital audio programming streams. The DAB audio programming stream that is provided pursuant to this paragraph must be at least comparable in sound quality to the analog programming service currently provided to listeners.

(b) Emergency information. The emergency information requirements found in § 73.1250 shall apply to all free DAB programming streams.

§ 73.404 Interim hybrid IBOC DAB operation.

(a) The licensee of an AM or FM station, or the permittee of a new AM or FM station which has commenced program test operation pursuant to § 73.1620, may commence interim hybrid IBOC DAB operation with digital facilities which conform to the technical specifications specified for hybrid DAB operation in the First Report and Order in MM Docket No. 99–325. AM and FM stations may transmit IBOC signals during all hours for which the station is licensed to broadcast.

(b) In situations where interference to other stations is anticipated or actually occurs, AM licensees may, upon notification to the Commission, reduce the power of the primary DAB sidebands by up to 6 dB. Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

(c) Hybrid IBOC AM stations must use the same licensed main or auxiliary antenna to transmit the analog and digital signals.

(d) FM stations may transmit hybrid IBOC signals in combined mode; i.e., using the same antenna for the analog and digital signals; or may employ separate analog and digital antennas. Where separate antennas are used, the digital antenna:

(1) Must be a licensed auxiliary antenna of the station;

(2) Must be located within 3 seconds latitude and longitude from the analog antenna;

(3) Must have a radiation center height above average terrain between 70 and 100 percent of the height above average terrain of the analog antenna.

(e) Licensees must provide notification to the Commission in Washington, DC, within 10 days of commencing IBOC digital operation. The notification must include the following information:

(1) Call sign and facility identification number of the station;

(2) Date on which IBOC operation commenced;

(3) Certification that the IBOC DAB facilities conform to permissible hybrid specifications;

(4) Name and telephone number of a technical representative the Commission can call in the event of interference;

(5) Certification that the analog effective radiated power remains as authorized;

(6) Transmitter power output; if separate analog and digital transmitters are used, the power output for each transmitter;

(7) If applicable, any reduction in an AM station's primary digital carriers;

(8) If applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna;

(9) If applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317;

(10) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of this chapter and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b) of this chapter. Any station that cannot certify compliance must submit an environmental assessment ("EA") pursuant to § 1.1311 of this chapter and may not commence IBOC operation until such EA is ruled upon by the Commission.

■ 4. In § 73.1201, revise paragraph (b) to read as follows:

§ 73.1201 Station identification.

* * * * *

(b) *Content.* (1) Official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; Provided, That the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. DTV stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a DTV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

(2) A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.

* * * * *

[FR Doc. E7–15922 Filed 8–14–07; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3414; MB Docket No. 06–46; RM–11256]

Radio Broadcasting Services; Little Rock and Waukomis, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Linda Crawford d/b/a Waukomis Broadcasting, Channel 292A is allotted at Waukomis, Oklahoma, as the community's first local aural transmission service. Channel 292A is allotted at Waukomis, Oklahoma, at Petitioner's requested site 6.3 kilometers (3.9 miles) southwest of the community at coordinates 36–14–01 NL and 97–56–25 WL.

DATES: Effective September 10, 2007.

ADDRESSES: 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. 06–46, adopted July 25, 2007, and released July 27, 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 duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *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 Oklahoma is amended by adding Waukomis, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–15704 Filed 8–14–07; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF STATE

48 CFR Parts 601, 602, 604, 605, 606, 609, 619, 622, 623, 628, 631, 633 and 653

[Public Notice: 5877]

RIN 1400–AC34

Department of State Acquisition Regulation; Technical Amendments

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This final rule makes editorial corrections and minor changes to the Department of State Acquisition Regulation (DOSAR). No proposed rule was issued as these corrections and changes do not affect the general public; therefore, prior public comment is not required per Federal Acquisition Regulation (FAR) 1.301(b).

DATES: *Effective Date:* This rule is effective August 15, 2007.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Office of the Procurement Executive, 2201 C Street, NW., State Annex Number 6, Room 603, Washington, DC 20522–0602; telephone number: 703–516–1691; e-mail address: *ginesgg@state.gov*.

SUPPLEMENTARY INFORMATION: This final rule makes the following corrections and updates:

- Removes acquisition of real property from the delegated authority of the Senior Procurement Executive. The FAR does not apply to the acquisition of real property, and the Senior Procurement Executive has no involvement in the acquisition of real property.
- Removes the Bureau of Population, Refugees and Migration from the list of offices that have limited acquisition authority. This office no longer awards any acquisitions.
- Corrects paragraph citations in the DOSAR definition of "major system".
- Removes the use of the Statebuy Interactive Platform (SIP) as a means of posting solicitations for domestic contracting offices. The SIP has been phased out; contracting officers now only use the Government-wide point of entry (FedBizOpps) for posting solicitations.
- Updates the dollar thresholds for approvals of justifications of other than full and open competition to conform to recent changes in the FAR.
- Removes paragraph (c) of DOSAR 619.201 to conform to FAR 19.201(c), which states that heads of contracting activities are responsible for implementing the small business programs within their activities. The DOSAR language currently delegates this responsibility to the Assistant Secretary of State for Administration. The Department believes that this responsibility is more appropriately handled by heads of contracting activities as stated in the FAR.
- Removes paragraph (a)(2) of DOSAR 619.805–2. This paragraph discussed a blanket waiver that the Department of State received from the Small Business Administration (SBA) in 2001. The waiver allowed for services exceeding $3 million and supplies exceeding $5 million that supplemented the security of U.S. diplomatic posts and protected the lives of Department personnel for the duration of the national state of emergency as declared by the President to be awarded non-competitively under the 8(a) program. A GAO audit (GAO–07–34R, Department of State Contract for Security Installation at Embassies) questioned the waiver. SBA subsequently discovered that they did not have the authority to issue a blanket waiver. As a result, SBA rescinded the waiver. Accordingly, the Department is removing this language from the DOSAR.
- Removes section 623.404 on the agency affirmative action program for recycled materials. The information provided Intranet and Internet Web sites where the Department's program could be accessed. However, the program is strictly internal guidance for requiring offices, and does not contain any information that would be useful to contractors. Since the document is for internal use only, it is no longer posted on the Internet. It is still posted on the Intranet for requiring offices; however, it is not necessary to state this in the DOSAR.
- Removes references to the General Services Administration Board of Contract Appeals (GSBCA). The Department of State used the GSBCA as its venue for contract appeals since it did not have its own Board of Contract Appeals. However, effective January 6, 2007, all civilian agency Boards of Contract Appeals were terminated and a new Civilian Board of Contract Appeals (CBCA) was created. All civilian agencies now use the CBCA; therefore, no reference to a specific Board is required.
- Removes the reference to the Intranet site where the Department's forms may be accessed.
- Makes numerous citation and title corrections to conform to the current FAR.
- Updates Web site addresses.

Regulatory Findings

Administrative Procedure Act

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Regulatory Flexibility Act

The Department of State, 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.

Unfunded Mandates 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed

the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988—Civil Justice Reform

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132—Federalism

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

National Environmental Policy Act

The Department has analyzed this regulation for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it will not have any effect on the quality of the environment.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 48 CFR Parts 601, 602, 604, 605, 606, 609, 619, 622, 623, 628, 631, 633 and 653

Government procurement.

■ Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for 48 CFR parts 601, 602, 604, 605, 606, 609, 619, 622, 623, 628, 631, 633, and 653 continue to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subchapter A—General

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

601.602–1 [Amended]

■ 2. Section 601.602–1 is amended by removing the words "real and" in the first sentence in paragraph (b).

■ 3. Section 601.603–1 is revised to read as follows:

601.603–1 General.

Details of the Department's acquisition career management program are described in 14 FAH–3, Acquisition Career Management Program Handbook, which is available on the Internet at *http://foia.state.gov/REGS/search.asp.*

601.603–70 [Amended]

■ 4. Section 601.603–70 is amended—

■ a. By removing paragraph (b)(5); and

■ b. By redesignating paragraphs (b)(6), (b)(7), and (b)(8) as (b)(5), (b)(6), and (b)(7), respectively.

PART 602—DEFINITIONS OF WORDS AND TERMS

602.101–70 [Amended]

■ 5. Section 602.101–70 is amended, in the definition of "major system", by removing "(b)" and adding in its place "(2)" in the first sentence, and removing "(c)" and adding in its place "(3)" in the second sentence.

PART 604—ADMINISTRATIVE MATTERS

604.502 [Amended]

■ 6. Section 604.502 is amended —

■ a. By removing paragraph (b)(1)(i) in its entirety;

■ b. By redesignating paragraphs (b)(1)(ii) and (b)(1)(iii) as (b)(1)(i) and (b)(1)(ii), respectively; and

■ c. By removing the words "Statebuy Interactive Platform" and adding the words "Government-wide point of entry" in their place in the first sentence of newly designated paragraph (b)(1)(ii).

Subchapter B—Competition and Acquisition Planning

PART 605—PUBLICIZING CONTRACT ACTIONS

605.403 [Amended]

■ 7. Section 605.403 is amended —

■ a. By removing the paragraph designator "(a)" at the beginning; and

■ b. By removing "FAR 5.403(a)" and adding in its place "FAR 5.403."

PART 606—COMPETITION REQUIREMENTS

606.302–6 [Amended]

■ 8. Section 606.302–6 is amended by removing the words "The Chief, Information Security Programs Division, Office of Information Security Technology, Bureau of Diplomatic Security" and adding the words "The Office Director, Office of Information Security, Office of Security Infrastructure, Bureau of Diplomatic Security (DS/SI/IS)" in their place in the second sentence of paragraph (c)(1).

606.304 [Amended]

■ 9. Section 606.304 is amended by removing "$500,000" and "$10,000,000" and adding "$550,000" and "$11.5 million" in their place, respectively, in paragraph (a)(2).

PART 609—CONTRACTOR QUALIFICATIONS

■ 10. Section 609.404 is amended:

■ a. By revising the section heading to read as set forth below.

■ b. By removing the words "FAR 9.404(c)(5)" and adding in its place "FAR 9.404(c)(7) in the second sentence.

609.404 Excluded parties list system.

* * * * *

■ 11. Section 609.404–70 is amended by removing "*http://epls.arnet.gov*" and adding in its place "*http://www.epls.gov*" at the end of the second sentence.

Subchapter C—Contracting Methods and Contracting Types

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

12. A new Subpart 613.2 is added to read as follows:

Subpart 613.2—Actions At or Below the Micro-Purchase Threshold

613.201 General.

(g)(1) The procurement Executive is the agency head's designee for the purpose of FAR 13.201(g)(1).

Subchapter D—Socioeconomic Programs

PART 619—SMALL BUSINESS PROGRAMS

619.201 [Amended]

■ 13. Section 619.201 is amended by removing paragraph (c).

619.805–2 [Amended]

■ 14. Section 619.805–2 is amended—

■ a. By removing paragraph (a)(2); and

■ b. By redesignating paragraph (c)(3) as paragraph (b).

619.810 [Amended]

■ 15. Section 619.810 is amended—

■ a. By redesignating paragraph (d) as paragraph (c); and

■ b. By removing "FAR 19.812(d)" and adding in its place "FAR 19.810(c)" at the end of newly designated paragraph (c).

619.811–3 [Amended]

■ 16. Section 619.811–3 is amended—

■ a. By redesignating paragraph (d)(3) as paragraph (d); and

■ b. By redesignating paragraph (f) as paragraph (e).

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

622.404–3 [Amended]

■ 17. Section 622.404–3 is amended by removing "FAR 22.404–3(b) and (e)" and adding in its place "22.404–3(b) and (d)".

622.13.10 [Amended]

■ 18. Section 622.1310 is amended by revising the heading to read as follows:

622.1310 Solicitation Provision and Contract Clauses.

* * * * *

PART 623—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

623.404 [Removed]

■ 19. Section 623.404 is removed.

Subchapter E—General Contracting Requirements

PART 628—BONDS AND INSURANCE

■ 20. The heading for Subpart 628.2 is revised to read as follows:

Subpart 628.2—Sureties and Other Securities for Bonds

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

631.205–6 [Amended]

■ 21. Section 631.205–6 is amended by removing "FAR 31.205–6(g)(3)" and adding in its place "FAR 31.205–6(g)(6)".

PART 633—PROTESTS, DISPUTES, AND APPEALS

633.102 [Amended]

■ 22. Section 633.102 is amended by removing the words "General Accounting Office" and adding the words "Government Accountability Office" in their place.

633.270–1, 633.270–2 and 633.270–3 [Removed]

■ 23. Sections 633.270–1, 633.270–2, and 633.270–3 are removed.

Subchapter H—Clauses and Forma

PART 653—FORMS

653.101–70 [Amended]

■ 24. Section 653.101–70 is amended by removing the last sentence.

Dated: July 30, 2007.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. E7–15919 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060418103–6181–02]

RIN 0648–XB95

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 1 Quota Harvested

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

ACTION: Closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the semi-annual quota period, May 1, 2007 - October 31, 2007, has been harvested. Therefore, effective 0001 hours, August 14, 2007, federally permitted commercial vessels may not fish for, possess, transfer, or land spiny dogfish until November 1, 2007, when the Period 2 quota becomes available. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 1 quota and to allow for effective management of this stock.

DATES: Quota Period 1 for the spiny dogfish fishery is closed effective at 0001 hr local time, August 14, 2007, through 2400 hr local time October 31, 2007. Effective August 14, 2007, federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221, or *Don.Frei@Noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2007 fishing year is 4 million lb (1.81 million kg) (71 FR 40436, July 17, 2006). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 600 lb (272 kg) for both quota Periods 1 and 2. Quota period 1 is allocated 2.3 million lb (1.05 million kg)), and quota Period 2 is allocated 1.7 million lb (763,849 kg) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to quota Period 1 have the effect of reducing the quota available to the fishery during quota Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, August 14, 2007, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through October 31, 2007, 2400 hr local time. The 2007 Period 2 quota will be available for commercial spiny dogfish harvest on November 1, 2007. Effective August 14, 2007, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

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

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

Dated: August 9, 2007

Emily H. Menashes

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

[FR Doc. 07–3993 Filed 8–10–07; 2:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XB96

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 2007, through 1200 hrs, A.l.t., September 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 200 metric tons as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), for the period 1200 hrs, A.l.t., July 1, 2007, through 1200 hrs, A.l.t., September 1, 2007.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species." This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 9, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 9, 2007.

Emily H. Menashes,

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

[FR Doc. 07–3994 Filed 8–10–07; 2:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC02

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 2007, through 1200 hrs, A.l.t., September 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North

Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 400 metric tons as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), for the period 1200 hrs, A.l.t., July 1, 2007, through 1200 hrs, A.l.t., September 1, 2007. The third seasonal apportionment of the 2007 Pacific halibut bycatch allowance was reduced to 224 mt because 176 mt of this apportionment was allocated to vessels participating in the Rockfish Pilot Program, as listed at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/07rppallocations.xls.*

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 9, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 9, 2007.

Emily Menashes,

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

[FR Doc. 07–3995 Filed 8–10–07; 2:48 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 157
Wednesday, August 15, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28635; Airspace Docket No. 07–ACE–7]

Proposed Establishment of Class D Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Independence Municipal Airport, KS. The establishment of an air traffic control tower at the airport has made this action necessary.

DATES: Comments must be received on or before 45 days from the date of publication in the **Federal Register.**

ADDRESSES: Send comments on this proposal to the 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. You must identify the docket number FAA–2007–28635/Airspace Docket No. 07–ACE–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2522.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2007–28635/Airspace Docket No. 07–ACE–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2a, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, code of Federal Regulations (14 CFR Part 71) by establishing a Class D airspace area extending upward from the surface to and including 3,300 feet above mean sea level (MSL) within a 4.6-mile radius of Independence Municipal Airport, KS. The establishment of an air traffic control tower has made this action necessary. The intended effect of this proposal is to provide controlled airspace for flight operations at Independence Municipal Airport, KS. The area would be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9P, dated September 1, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect all traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565,3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Independence, KS [New]

Independence Municipal Airport, KS
(Lat. 37°09'30" N., long. 95°46'42" W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.6-mile radius of Independence Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. the effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas on July 27, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–3963 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–277–28591; Airspace Docket 07–ASO–16]

Proposed Amendment of Class E Airspace; Scottsboro, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Scottsboro, AL, to accommodate a new Standard Instrument Approach Procedure (SIAP) that has been developed for the Scottsboro Municipal—Word Field Airport. Additional controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at Scottsboro Municipal—Word Field Airport.

DATES: Comments must be received on or before October 1, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Ave., SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527. You must identify the docket number FAA–2007–28591; Airspace Docket 07–ASO–16, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communication should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2007–28591/Airspace Docket No. 07–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index/html.* Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Scottsboro, AL. The current Class E airspace area supporting helicopter operations at Jackson County Hospital is too small to contain the new RNAV (GPS) SIAPs at nearby Scottsboro Municipal—Word Field Airport. This proposed action would provide the additional controlled airspace, extending upward from 700 feet above ground level (AGL), that is required to support the new RNAV (GPS) SIAPs for runways 4 and 22 at Scottsboro Municipal—Word Field Airport.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO AL E5 Scottsboro, AL [ADDED]

Scottsboro Municipal—Word Field Airport, AL
(Lat. 34°41′19″ N., long. 86°00′21″ W.)
Jackson County Hospital Point In Space Coordinates (Lat. 34°39′47″ N., long. 86°01′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Scottsboro Municipal—Word Field Airport extending from the 6.5-mile radius to 4.4 miles northeast of the airport and within 4 miles each side of the 218° bearing from the Scottsboro Municipal—Word Field Airport extending from the 6.5-mile radius to 4.5 miles southwest of the airport; and that airspace within a 6-mile radius of the point in space (Lat. 34°39′47″ N., long. 86°01′54″ W.) serving Jackson County Hospital.

* * * * *

Issued in College Park, Georgia, on July 2, 2007.

Lynda G. Otting,

Acting Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–3961 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0045]

20 CFR Part 405

RIN 0960–AG53

Proposed Suspension of New Claims to the Federal Reviewing Official Review Level, Changes to the Role of the Medical and Vocational Expert System, and Future Demonstration Projects

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to modify our disability administrative adjudication processes to suspend new claims to the Federal reviewing official (FedRO) level, now operating in the Boston region. Claims already received will continue to be processed by the FedRO and a related component of the disability determination process, the Medical and Vocational Expert System (MVES), commonly known as the Office of Medical and Vocational Expertise (OMVE). We also propose to remove the MVES/OMVE from the disability adjudication process for new claims. We are making these proposals to ensure that we continually improve our disability adjudication process. Lastly, we are requesting comments on using the MVES/OMVE to develop and manage a national registry of experts.

DATES: To be sure that we consider your comments on our proposed changes, we must receive them no later than September 14, 2007. However, we also invite comments by November 13, 2007 on the merits of a national registry of experts, including MVES/OMVE management of the registry, and the rates to be paid to the experts affiliated with the registry.

ADDRESSES: You may give us your comments by: Internet through the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 960 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: James A. Winn, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0600 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Introduction

We are dedicated to providing high-quality service to the American public. When in March 2006 we announced changes to our administrative review process for initial disability claims, we explained that we expected that the changes would improve disability service. Our commitment to continuous improvement in the way we process disability claims did not end with the publication of those rules as we continually explore ways to improve service to some of the most vulnerable in our society. We face, now and in the foreseeable future, significant challenges to our ability to provide the level of service that disability benefit claimants deserve because of the increased complexity of and growth in claims for those benefits. Consequently, we propose modifications to our administrative review process that will further help us evaluate changes put in place in March 2006 and help us provide accurate and timely service to claimants for Social Security disability benefits and supplemental security income payments based on disability or blindness.

The importance of these disability benefits to the lives and subsistence of many Americans cannot be underestimated. Nearly 15 million disabled Social Security beneficiaries and supplemental security income recipients receive over $10 billion in Federal monthly payments. The adjudication of disability claims requires evaluating complex medical and vocational evidence.

The number of claims and requests for hearings that we receive has continued to expand. In 2004–2006, we received an annual average of 2.6 million disability claims that required decisions on medical grounds, the most time and labor intensive basis for deciding such claims. Along with this expansion in the number of claims, there has been a concomitant increase in the number of hearing requests. Our hearing offices

have received an average of over 564,000 titles II and XVI disability hearing requests each year from 2002 through 2006, a significant increase from the annual average of almost 472,000 hearing requests in 1997–2001. As these figures show, over the 5-year period from 2002 through 2006, we received each year over 90,000 more requests for titles II and XVI hearings than we annually received during the period from 1997 through 2001. The vast number of disability claims now filed each year, as well as other factors such as the expected increase in disability claims as the baby boomers move into their disability-prone years, probable limitations on our resources to process these claims, and the projected impending increase in filings for retirement and survivors benefits as baby boomers retire, will continue to place an even greater strain on the system.

We expected that the spring 2006 changes to the administrative review process for initial disability claims would "improve the accuracy, consistency, and timeliness of decision-making throughout the disability determination process." 71 FR 16424 (March 31, 2006). We planned a gradual roll-out of the changes so that we could determine their effect on the disability process overall. As we explained then, "Gradual implementation will allow us to monitor the effects that our changes are having on the entire disability determination process * * * We will carefully monitor the implementation process in the Boston region and quickly address any problems that may arise." 71 FR at 16440–41. Based on initial reviews of the quick disability determination (QDD) and FedRO elements of that process, and mindful of the workload challenges that we now face—especially at the hearing level—we believe we need to modify some of the changes made last spring.

As we explain in our recently published notice of proposed rulemaking on the QDD process (July 10, 2007; 72 FR 37496), we are proposing to retain and expand the QDD process, and, as we explain here, we propose to suspend new claims going through the FedRO and the MVES, organizationally known as the OMVE. However, claims already received will continue through the FedRO and MVES so we can continue to evaluate their effectiveness. These proposals are based on our commitment to outstanding service and to continuously improving our service as we realign our resources to ensure that we are capable of processing the current and anticipated number of disability claims and reducing the number of pending hearings.

1. Suspending OFedRO and MVES/OMVE Allows Reallocation of Resources to the Backlog at the Hearings Level

In the March 2006 final rule, we replaced the State agency reconsideration level with a Federal adjudicative level, called the FedRO. Attorneys staff the FedRO positions, and they, along with the managerial, support, and administrative staff, make up the Office of the FedRO (OFedRO). OFedRO uses the MVES/OMVE to develop the medical and vocational evidence in the claims before them. The goal of FedRO and OMVE is to have this level of review help ensure more accurate and consistent decision making earlier in the process. We are continuing to evaluate the effect of these new components on our program and administrative functions. Our experience over the last year in the Boston region demonstrates that the administrative costs associated with OFedRO and its consequent use of the MVES/OMVE to develop medical and vocational evidence is greater over the foreseeable future than originally anticipated. We do not yet have sufficient results to fully evaluate the potential improvements in program efficacy that are the goals of the FedRO and OMVE. Therefore, we propose to suspend new claims going through the FedRO and OMVE, so that we can reallocate resources to reduce the backlog at the hearing level, while we evaluate the FedRO and OMVE through the processing of claims already received. Once this evaluation is completed and alternative approaches analyzed, we will make a decision whether to reinstate the processing of new claims at the FedRO or to pursue an alternative approach to improving the disability determination process.

Under this proposal, we are amending part 405 with provisions that will suspend new claims to the OFedRO and MVES/OMVE. This change will allow us to continue to evaluate the FedRO and OMVE through the processing of claims already received. We expect to have approximately 15,500 cases pending FedRO review when this rule becomes effective. We will complete the processing of those pending cases, but will not assign to FedRO any more cases originally filed under the new process in Boston that otherwise would have been slated for FedRO review. Instead, if cases are at the initial level in Boston or not assigned to FedRO on the effective date of this rule, those cases will be assigned to State agencies for reconsidered determinations or to administrative law judges for hearing, whichever is applicable in that particular New England State. In other words, States in the Boston region, where the FedRO and MVES/OMVE are currently functioning, would return to the same process they were following before August 2006, whether that process was reconsideration under 20 CFR 404.907 and 416.1407 or the testing procedures under 20 CFR 404.906 and 416.1406.

2. Request for Comments on a National Registry of Experts

Even though we propose to suspend new claims to the MVES/OMVE from the administrative review process under part 405 of our rules, we are considering using the MVES/OMVE in a more limited role to develop and manage a national registry of medical, psychological, and vocational experts to assist disability adjudicators in developing and/or clarifying information within the record. Once the MVES/OMVE has developed the registry, the MVES/OMVE would continue to manage the registry. Disability adjudicators at the State and Federal levels would be able to directly access the experts affiliated with the registry without having to go through the MVES/OMVE to arrange for expert assistance.

We ask for comments on the merits of such a registry, including MVES/OMVE management of the registry, and the rates to be paid to the experts affiliated with the registry. Questions upon which you may wish to comment include, but are not limited to: What qualifications should experts on the national registry have? Should experts be required to have experience or training related to our disability programs? Should disability adjudicators be required to use the registry when they require expert assistance? Should we pay experts flat rates nationally or should the rates be based on locality? If rates are based on locality, what factors should we consider in setting those rates? Regardless of whether the rates we pay the experts are based on national or local rates, should we vary rates to account for the individual's level of expertise, and if so, how should that be done? Should we build in an automatic adjustment for inflation and, if so, which measure would be most appropriate for this function? We would be very interested in your thoughts regarding these issues and request that they be submitted within 90 days of the publication of this notice. We will consider comments submitted within this time period as we continue to develop our plans for a national registry.

We will not respond to these comments until such time as we may publish a notice of proposed rulemaking setting out more detailed plans for such a registry.

Clarity of These Proposed Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these final rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5), and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and permit a 60-day comment period. This period, however, may be shortened when the agency finds good cause that a 60-day comment period would be impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. For this proposed rule, we find that there is good cause for allowing a 30-day comment period on the issue of suspending OFedRO and MVES/OMVE (section 1 above) because we believe that it would be contrary to the public interest not to effectuate these rules as quickly as we can. However, if it appears that 30 days is not sufficient time to comment—for example, if the volume of comments indicates that there is great public interest in this rule—we will consider extending the comment period to 60 days.

We intend to shift the resources required for the FedRO and MVES/OMVE to the effort to reduce the pending hearing requests to a manageable level. In order to shift those resources as quickly as we can, we must suspend new claims to the appeal procedure to the FedRO, and thereby, stem the flow of cases to the FedRO and the MVES/OMVE. Upon the effective date of the final rules, the first level of appeal would be reconsideration for any claimant who has not yet requested FedRO review, unless the State is a part of the prototype test in which case the first level of review would be to an administrative law judge. Claimants who have not yet been issued an initial determination would be advised in the initial determination notice that their first level of appeal would be reconsideration or a hearing, whichever applies. This would allow the FedRO and the MVES/OMVE to complete the processing of the cases in the pipeline, allow us to redirect resources to other tasks, including assisting us in reducing the backlog at the hearing level.

However, we are providing a 90-day comment period on the issue of a national registry of experts (section 2 above).

Executive Order 12866, as Amended

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for an economically significant regulatory action under Executive Order 12866, as amended. Thus, it was reviewed by OMB.

The Office of the Chief Actuary (OCACT) estimates that this rule will result in program savings of roughly $1.0 billion in OASDI benefit payments and cost of $0.1 billion in Federal SSI payments over the next 10 years, as shown below (in millions of dollars):

TABLE 1.—ESTIMATED EFFECT ON OASDI AND FEDERAL SSI BENEFIT PAYMENTS OF A PROPOSED REGULATION ELIMINATING NEW CLAIMS TO THE FEDERAL REVIEWING OFFICIAL AND MODIFYING THE ROLE OF THE MEDICAL AND VOCATIONAL EXPERT SYSTEM, FISCAL YEARS 2008–17

[In millions]

Fiscal year	OASDI	SSI	Total
2008	−$14	−$3	−$18
2009	−42	−9	−51
2010	−51	−8	−60
2011	−57	−15	−72
2012	−45	−6	−51
2013	−53	9	−44
2014	−122	22	−100
2015	−192	29	−163
2016	−248	40	−208
2017	−219	82	−137
Totals:			
2008–12	−209	−41	−251
2008–17	−1,042	140	−902

Notes:
1. The estimates are based on the assumptions underlying the President's FY 2008 Budget.
2. Federal SSI payments due on October 1st in fiscal years 2012, 2017 and 2018 are included with payments for the prior fiscal year.
3. Totals may not equal sum of components due to rounding.

Table 1 above presents the estimated short-range effects on OASDI benefit payments and Federal SSI payments that would result from implementation of this NPRM, measured relative to the baseline used for the President's Fiscal Year 2008 Budget and assuming that a final rule implementing these changes would become effective for initial determinations made on or after April 1, 2008. The FY 2008 Budget assumed that DSI would be gradually implemented at the pace of one region per year and be fully implemented for new claims in all regions by the beginning of FY 2016. For the 10 States where the Prototype determination process has been or is being tested, the effect of this NPRM

would be to retain or restore the Prototype process so that the first level of appeal of an initial disability decision would be to an administrative law judge.

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 2, we have prepared an accounting statement showing the annualized economic impact of suspending new claims to the FedRO level. All estimated impacts are classified as transfers.

TABLE 2.—ACCOUNTING STATEMENT: ESTIMATED ECONOMIC IMPACT OF SUSPENDING NEW CLAIMS TO THE FEDRO LEVEL FROM 2008–2016 IN 2007 DOLLARS

Category	Transfers
Annualized Monetized Transfers	$81.3 million (7% discount rate). $86.4 million (3% discount rate).
From Whom To Whom?	From SSA beneficiaries to the Social Security trust fund and the general fund.

Suspending new claims going through the FedRO and OMVE will allow us to reallocate resources to reduce the backlog at the hearing level by holding more hearings and making system improvements to increase the efficiency of our hearings process.

We will also continue to evaluate the FedRO and OMVE through the processing of claims already received. This evaluation will include an assessment of DSI, as the pilot is currently implemented in the Boston region, with existing claims. In the analysis we will analyze DSI's impact on the timeliness of disability determinations, on overall program costs, as well as its impact on the administrative costs required to implement this new process. Once this evaluation is complete and alternative approaches analyzed, we will make a decision whether to reinstate the processing of new claims into the FedRO or pursue an alternative approach to improving the disability determination process.

Regulatory Flexibility Act

We certify that this proposed rule, when published in final, will not have a significant economic impact on a substantial number of small entities as it affects only States and individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These rules impose no new reporting or recordkeeping requirements requiring OMB clearance.

Federalism Impact and Unfunded Mandates Impact

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. This proposed rule does not affect the roles of the State, local, or tribal governments. However, the proposed rule takes administrative notice of existing statutes governing the roles and relationships of the State agencies with us with respect to disability determinations under the Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

Dated: August 7, 2007.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts A and C of part 405 as set forth below:

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

Subpart A—[Amended]

2. Amend § 405.10 by adding paragraph (d) to read as follows:

§ 405.10 Medical and Vocational Expert System.

* * * * *

(d) This section will no longer be effective on the same date as described in § 405.240(c) of this part unless the Commissioner decides that the Medical and Vocational Expert System should be continued and extends the sunset date as described in § 405.240(d) of this part by publishing a notice of proposed rulemaking in the **Federal Register** before that date.

3. Revise the appendix to subpart A of part 405 to read as follows:

Appendix to Subpart A of Part 405—Claims That Will Be Handled Under the Procedures in This Part

(a) We will apply the procedures in this part to disability claims (as defined in § 405.5) filed in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, or Connecticut.

(b) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review will apply the regulations that initially applied to the disability claim. For example, if you file a claim in a State in which we apply the procedures in this part, the procedures in this part will apply to the disability claim at subsequent levels of review, even if you move to a State where we would otherwise not apply these procedures. Conversely, if you file a claim in a State where we do not apply the procedures in this part, we will adjudicate the claim using the procedures in part 404 or 416 of this chapter, as appropriate, even if you subsequently move to a State where we would otherwise apply the procedures in this part.

Subpart C—[Amended]

4. Add § 405.240 to read as follows:

§ 405.240 Sunset of this Subpart.

(a) If you have filed a request for review by a Federal reviewing official on or before the effective date of this section, the Federal reviewing official will review and issue a decision on your claim.

(b) If you have not filed a request for review by a Federal reviewing official on or before the effective date of this section and you have received an initial determination under subpart B of this part, we will process any request for additional administrative review filed after the effective date as either a request for reconsideration by the State agency or a request for hearing before an administrative law judge if your State uses the testing procedures under §§ 404.906 and 416.1406 of this title.

(c) This subpart will no longer be effective the day after a Federal reviewing official issues a decision on the last of the claims accepted for review under paragraph (a) of this section.

(d) If compelling evidence shows that the Federal reviewing official process is efficient, effective, and sustainable given available Agency resources, the Commissioner may reinstate the Federal reviewing official process by publishing a notice of proposed rulemaking in the **Federal Register**.

[FR Doc. E7–16071 Filed 8–14–07; 8:45 am]
BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2007–0651; FRL–8455–1]

Approval and Promulgation of Implementation Plans; Louisiana; Clean Air Interstate Rule Nitrogen Oxides Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana on July 12, 2007, as the Louisiana Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Trading Programs abbreviated SIP. We are proposing to approve Louisiana's CAIR NO_X Annual and Ozone Season Abbreviated SIP revision in parallel with the Louisiana Department of Environmental Quality's (LDEQ) rulemaking activities ("parallel processing"). The abbreviated SIP revision includes the Louisiana methodology for allocation of annual and ozone season NO_X allowances. EPA is proposing to determine that the Louisiana CAIR NO_X Trading Programs abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision. EPA is also proposing to approve revisions to the Louisiana SIP that establish administrative reporting requirements for all Louisiana CAIR programs; these revisions were submitted on September 22, 2006, as part of the Louisiana CAIR Sulfur Dioxide (SO_2) Trading Program SIP. EPA is also proposing that the Louisiana CAIR NO_X Annual and Ozone Season Abbreviated SIP will satisfy Louisiana's Clean Air Act (CAA) Section 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another State's air quality through interstate transport.

The intended effect of this action is to reduce NO_X emissions from the State of Louisiana that are contributing to nonattainment of the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS or standard) in downwind states. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before September 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2007–0651, by one of the following methods:

(1) *www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0651. 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 the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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 *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh

floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, Office of Environmental Quality Assessment, 602 N. Fifth Street, Baton Rouge, Louisiana 70802.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever any reference to "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. What Action Is EPA Proposing?

On July 12, 2007, the State of Louisiana requested that EPA parallel process an abbreviated revision to the Louisiana SIP in conjunction with the LDEQ's rulemaking activities. The SIP revision consists of new regulations that establish the NO_X annual and ozone season allocation methodologies that are to be used instead of the Federal allocations in the Louisiana CAIR NO_X Annual and Ozone Season Federal Implementation Plans (FIP). The affected state regulations that we are proposing to approve today as part of the Louisiana CAIR NO_X Trading Programs abbreviated SIP are enacted at Louisiana Administrative Code, Title 33, Part III, Chapter 5, Sections 506(A) and (B) (LAC 33:III.506(A) and (B)). EPA is proposing to determine that the Louisiana CAIR NO_X Trading Programs abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision at 40 CFR 51.123(p)(1) and (ee)(2). We are also at this time proposing to approve revisions to the Louisiana SIP at LAC 33:III.506 (D) and (E), submitted September 22, 2006, that establish administrative reporting requirements germane to all Louisiana CAIR programs. We had deferred action on these subsections in the Louisiana CAIR SO_2 rulemaking until we had the opportunity to review and act upon the Louisiana CAIR NO_X programs (see 72 FR 39741).

The provisions of the Louisiana CAIR NO_X Annual and Ozone Season FIP at 40 CFR 52.984 require owners or operators of NO_X sources located in Louisiana to meet the Federal NO_X annual and ozone season trading programs found at 40 CFR part 97. These Federal trading programs' rules include provisions at 40 CFR 97.144(a) and 97.343(a) that if EPA approves the Louisiana abbreviated SIP revision for NO_X annual and ozone season allocation methodologies, then the Federal NO_X annual and ozone season allocation methodologies no longer apply. If EPA approves the Louisiana NO_X annual and ozone season allocation methodologies into the Louisiana SIP, then EPA under 40 CFR 52.984, 97.144(a), and 97.343(a) will not make allocations for the CAIR NO_X sources in Louisiana; the LDEQ will allocate NO_X annual and ozone season allowances using the Louisiana SIP rules.

Consequently, if EPA approves the Louisiana abbreviated SIP revision, EPA is not required to take any rulemaking action to change the Federal CAIR NO_X Annual and Ozone Season trading programs in 40 CFR part 97 or to change the Louisiana CAIR FIP for NO_X annual and ozone season emissions in 40 CFR 52.984. Rather EPA, by ministerial action, will note in Appendix A.1. to Subpart EE of 40 CFR Part 97, that Louisiana has an approved SIP revision for NO_X annual allowances. Similarly, EPA will note in Appendix A to Subpart EEEE of 40 CFR Part 97, that Louisiana has an approved SIP revision for NO_X ozone season allowances. Since the Federal CAIR NO_X Annual and Ozone Season trading programs' rules provide for automatic revision of the Louisiana CAIR FIP for NO_X annual and ozone season emissions upon approval of such an abbreviated SIP revision, the Louisiana rules for NO_X annual and ozone season allowance allocations would apply, rather than the Federal rules governing allocations, upon the effective date of approval.

In addition, EPA is also proposing to approve a revision to Louisiana's SIP to address the "good neighbor" provisions of section 110(a)(2)(D)(i) of the CAA. This section of the Act requires each State to submit a SIP that prohibits emissions that could adversely affect another State. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the national ambient air quality standards (NAAQS), (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

Why are we "parallel processing" and how does it work?

The Louisiana CAIR NO_X Annual and Ozone Season FIP includes a NO_X allowance recordation deadline of September 30, 2007, at 40 CFR 97.153 and 97.353. As explained in the preamble of our April 28, 2006, promulgation of the CAIR FIPs, EPA will only record State allowance allocations if EPA has approved a full or abbreviated SIP for the State which specifies the allocation methodology (see 71 FR 25354). The State of Louisiana requested parallel processing of the Louisiana CAIR NO_X Trading Program Abbreviated SIP revision to expedite federal approval of the Louisiana NO_X annual and ozone season allocation methodology.

In order to expedite review, approval of this revision is being proposed under a procedure called "parallel processing" whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations (40 CFR part 51, Appendix V, section 2.3). If the State's proposed revision is substantially changed, EPA will evaluate those subsequent changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Louisiana and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may results in a re-proposal altering the approvability of the SIP revision.

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

EPA promulgated the CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and /or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets statewide emission reduction requirements for NO_X for the ozone season (defined at 40 CFR 97.302 as May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting and submitting for EPA approval any other control measures.

EPA found that Louisiana significantly contributed to nonattainment of the 8-hour ozone standard in Texas and the $PM_{2.5}$ standard in Alabama, resulting in Louisiana being subject to the SO_2, NO_X annual, and NO_X ozone season requirements of CAIR. Louisiana submitted a SIP revision addressing the SO_2 requirements of CAIR on September 22, 2006. We approved this SIP revision through a direct final action on July 20, 2007 (72 FR 39741).[1] Today we are proposing to approve the abbreviated SIP revision addressing the Louisiana NO_X annual and ozone season requirements of CAIR with this rulemaking. There are no punitive consequences for Louisiana failing to submit SO_2, NO_X Annual, and NO_X Ozone Season CAIR SIPs.

CAIR sets forth what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Act with regard to interstate transport for the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings (70 FR 21147), effective May 25, 2005, that the affected States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These May 25, 2005, findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D), including the "good neighbor provision" at section 110(a)(2)(D)(i) which applies to interstate transport of certain emissions. Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated. On August 15, 2006, EPA issued guidance for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ NAAQS.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. See 40 CFR 52.35 and 52.36. Each CAIR State is subject to the FIP until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO_2, NO_X Annual, and NO_X Ozone Season trading programs, as appropriate, found at 40 CFR part 97. The CAIR FIPs' SO_2, NO_X Annual, and NO_X Ozone Season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIPs' or SIPs' trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the state), while the CAIR FIPs remain in place for all other provisions. See 40 CFR 51.123(p)(1)–(3) and (ee)(1)–(3), 71 FR 25328 and 25339 (April 28, 2006).

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements. On December 13, 2006, EPA published minor, non-substantive revisions that serve to clarify CAIR and the CAIR FIP.

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

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

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. The December 13, 2006, revisions to CAIR and the CAIR FIPs were non-substantive and, therefore, do not affect EPA's evaluation of a State's SIP revision.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs. Louisiana was not subject to the NO_X SIP Call; therefore, the second exception is not applicable.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements

[1] Louisiana is subject to the CAIR SO_2 Federal Implementation Plan at 40 CFR 52.985 until EPA's final action becomes effective on the Louisiana CAIR SO_2 Trading Program SIP revision. If no adverse comments are received on our direct final action by August 20, 2007, the Louisiana CAIR SO_2 Trading Program will be effective on September 18, 2007. We are not accepting comments on the Louisiana CAIR SO_2 Trading Program in this action; if you would like to comment on the Louisiana CAIR SO_2 Trading Program please follow the instructions at 72 FR 39741, Docket ID No. EPA–06–OAR–2006–0849.

by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. The provisions in the abbreviated SIP revision, if approved into a State's SIP, will not replace that State's CAIR FIP; however, the requirements for the CAIR FIPs at 40 CFR part 52 incorporate the provisions of the Federal CAIR trading programs in 40 CFR part 97. The Federal CAIR trading programs in 40 CFR part 97 provide that whenever EPA approves an abbreviated SIP revision, the provisions in the abbreviated SIP revision will be used in place of or in conjunction with, as appropriate, the corresponding provisions in 40 CFR part 97 of the State's CAIR FIP (e.g., the NO_X allowance allocation methodology).

A State submitting an abbreviated SIP revision, may submit limited SIP revisions to tailor the CAIR FIP's cap-and-trade programs to the state submitting the revision. An abbreviated SIP revision may establish certain applicability and allowance allocation provisions instead of or in conjunction with the corresponding provisions in the CAIR FIP's rules in that State. Specifically, an abbreviated SIP revision may:

(1) Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP's NO_X Ozone Season trading program;

(2) Provide for allocation of NO_X annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;

(3) Provide for allocation of NO_X annual allowances from the CSP by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; or

(4) Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP's cap-and-trade programs under the opt-in provisions in the CAIR FIP's rules.

With approval of an abbreviated SIP revision, the State's CAIR FIP remains in place, as tailored to sources in that State by the approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_X allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, Louisiana submitted an abbreviated SIP revision that addresses the allocation methodology for the NO_X Annual and Ozone Season programs. Louisiana previously submitted a full SIP revision to address the SO_2 requirements of CAIR.

V. What Is EPA's Analysis of Louisiana's CAIR NO_X Annual and Ozone Season Abbreviated SIP Revision?

A. State Budgets for NO_X Annual and Ozone Season Allowance Allocations

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

The CAIR SIP requirements and the Louisiana CAIR NO_X Annual FIP establish the NO_X annual budgets for Louisiana as 35,512 tons of NO_X annual emissions for 2009–2014 and 29,593 tons of NO_X annual emissions in 2015 and thereafter. Louisiana's submitted rules at LAC 33:III.506(A)(2) establish that the total amount of NO_X annual allowances allocated per control period shall not exceed the CAIR NO_X annual budget at 40 CFR 97.140. Therefore, the annual budgets as listed in 40 CFR 51.123 and 97.140 (35,512 tons in 2009–2014 and 29,593 tons in 2015 and thereafter) continue to apply.

The CAIR SIP requirements and the Louisiana CAIR NO_X Ozone Season FIP establish the NO_X ozone season budgets for Louisiana as 17,085 tons of NO_X ozone season emissions for 2009–2014 and 14,238 tons of NO_X ozone season emissions in 2015 and thereafter. Louisiana's rules at LAC 33:III.506(B)(2) establish that the total amount of NO_X ozone season allowances allocated per control period shall not exceed the CAIR NO_X ozone season budget at 40 CFR 97.340. Therefore the ozone season budgets as listed in 40 CFR 51.123 and 97.340 (17,085 tons in 2009–2014 and 14,238 tons in 2015 and thereafter) continue to apply.

The Louisiana abbreviated SIP revision, being proposed today, does not affect the budgets for the NO_X annual and ozone season programs. These budgets are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the Louisiana CAIR NO_X Annual and Ozone Season FIPs. In short, the Louisiana abbreviated SIP revision only affects allocations of NO_X annual and ozone season allowances under the established budgets.

B. CAIR NO_X Annual and Ozone Season Cap-and-Trade Programs

The CAIR NO_X Annual and Ozone Season FIPs for the States largely mirror the structure of the NO_X SIP Call model-trading rule in 40 CFR part 96 subparts A through I. While the provisions of the NO_X Annual and Ozone Season FIPs are similar, there are some differences. For example, the NO_X Annual FIPs provide for a compliance supplement pool (CSP), which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions.

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

Louisiana is subject to the CAIR FIPs for 8-hour ozone and $PM_{2.5}$. These CAIR FIPs for Louisiana, at 40 CFR 52.984 and 52.985, require owners or operators of each NO_X and SO_2 CAIR source located in Louisiana to meet the requirements of the Federal CAIR NO_X Annual, NO_X Ozone Season, and SO_2 trading programs in 40 CFR part 97. Consistent with the flexibility given to States, States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of its CAIR FIPs' trading programs. The July 12, 2007, submission from Louisiana is such an abbreviated SIP revision and is for the NO_X annual and ozone season trading programs. Louisiana submitted a full SIP revision

for the SO_2 trading program on September 22, 2006.

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

In general, the CAIR FIPs' trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Because Louisiana was not included in the NO_X SIP Call trading program, Louisiana does not have or need the option of expanding the applicability provisions of the CAIR NO_X Ozone Season Trading Program to include non-EGU NO_X SIP Call sources.

D. NO_X Annual and Ozone Season Allowance Allocations

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

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

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

(2) The frequency of allocations;

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

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

Consistent with the flexibility given to States in their CAIR FIPs' provisions, Louisiana has chosen to replace the provisions of the Louisiana CAIR NO_X Annual and Ozone Season FIPs concerning the allocation of NO_X annual and ozone season allowances with its own methodology. The LDEQ requested assistance from the Louisiana Public Service Commission (LPSC) to determine the impact of CAIR implementation on Louisiana electricity ratepayers. Through this study and extensive stakeholder involvement, LDEQ developed and approved regulations that will allocate NO_X allowances at no cost to the CAIR subject units in Louisiana. Accordingly, the LDEQ has approved provisions establishing the NO_X annual and ozone season allocation methodologies at LAC Title 33, Part III, Chapter 5, Sections 506 (A) and (B), respectively.

Section 506(A) establishes the allocation methodology for the NO_X annual allowances. This section replaces 40 CFR 97.141 and 97.142 as promulgated by EPA on April 28, 2006. All remaining provisions of the Federal NO_X Annual Trading Program at 40 CFR Part 97, Subparts AA-HH continue to apply to Louisiana CAIR sources. Similarly, Section 506(B) establishes the allocation methodology for the NO_X ozone season allowances. Section 506(b) replaces 40 CFR 97.341 and 97.342 as promulgated by EPA on April 28, 2006. All remaining provisions of the Federal NO_X Ozone Season Trading Program at 40 CFR Part 97, Subparts AAAA–HHHH continue to apply to CAIR-subject sources in Louisiana.

The Louisiana NO_X annual and ozone season allocation methodologies are structured identically. The CAIR units in Louisiana are first divided into non-utility or utility unit categories. Non-utility units are those electric generating units that have not been certified by the LPSC or approved by a municipal authority, a process under which the unit is certified as being in the public convenience and necessity. Utility units are those units identified by the LPSC or a municipal authority as electric generating units that produce power for the public convenience and necessity. The utility unit category is further subdivided based on number of years of operating data before the allocation submittal deadline to EPA. The utility units without three years of operating data prior to the allocation submittal deadline to EPA are allocated allowances as certified units. All other utility units with three or more years of operating data are allocated allowances as utility units.

After determining the non-utility or utility status of a unit, the LDEQ proceeds with the calculation of allowances; the non-utility unit allocations are made first under both the annual and ozone season trading programs. The allocation methodology for non-utility units is found at sections 506(A)(2)(a) and 506(B)(2)(a). For the NO_X annual trading program, the non-utility unit NO_X allowances will equal the average of the actual NO_X annual emissions of the three calendar years immediately preceding the year in which the allocations are submitted to EPA. For the NO_X ozone season trading program, the non-utility unit NO_X allowances equal the average of the actual NO_X ozone season emissions of the three calendar years immediately preceding the year that allocations are submitted to EPA. The actual NO_X emissions data used in both the annual and ozone season trading programs is the emissions inventory data reported pursuant to LAC 33:III.919; if emissions inventory data is not available then data from the Acid Rain Program will be substituted. The exception is that the allowances submitted to EPA in 2007 will be based on emissions inventory data from 2002, 2003, and 2004.

Once the non-utility unit allowances have been subtracted from the total state budget identified in sections 506(A)(2) and (B)(2), the utility units are allocated allowances proportionally based on heat input data. Certified units (utility units with less than three years of operating data before the allocation submittal deadline) are allocated based on converted heat input as specified in section 506(A)(2)(b) and 506(B)(2)(b). A certified unit will be allocated allowances for the control period in which the unit will begin operation and for each successive control period for which no NO_X allowances have been previously allocated until three years of operating data are available before the allocation submittal deadline. The converted heat input for the certified unit is calculated from the gross electrical output as stated in the documentation for the LPSC or municipal authority certification process. Utility units (those units with three or more years of operating data before the allocation submittal deadline) are allocated allowances based on the adjusted heat input according to sections 506(A)(2)(c) and 506(B)(2)(c). The exception is that the allowances submitted to EPA in 2007 will use the average of the control period adjusted heat input data from 2002, 2003, and 2004. The unit's adjusted heat input is calculated by multiplying the control period heat input for the unit by 100 percent if the unit is coal-fired, by 60 percent if the unit is oil-fired, and by 40 percent if the unit is not coal- or oil-fired. A unit's control period heat input,

status as coal-fired or oil-fired, and total tons of NO_X emissions during a control period are determined in accordance with 40 CFR Part 97 and reported pursuant to LAC 33:III.919.

Sections 506(A)(3) and (B)(3) establish the dates by which the LDEQ must submit NO_X annual and ozone season allocations to EPA for recordation in CAIR compliance accounts. No later than April 30, 2007, the LDEQ submits to EPA the CAIR NO_X annual and ozone season allowance allocations for the control periods 2009, 2010, and 2011. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the LDEQ will submit to EPA the NO_X annual and ozone season allowance allocations for the control period in the fourth year after the year of the applicable deadline for allocation submission. LDEQ submitted NO_X annual and ozone season allowances for control periods 2009, 2010, and 2011 on April 27, 2007.

The Louisiana abbreviated SIP revision, being proposed today, satisfies the requirements for abbreviated SIP allocation flexibility at 51.123(p)(1) and (ee)(2). The provisions discussed above ensure that the LDEQ will not allocate more than the state budget in any given control period and that the allocations are submitted to EPA by the allocation submittal deadline.

E. Allocation of NO_X Allowances from the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR; Louisiana's share of the CSP is 2,251 NO_X allowances. States may distribute CSP allowances (one allowance for each ton of early reduction) to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon ademonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR and the Louisiana CAIR NO_X Annual FIP's provisions allocate 2,251 NO_X allowances to the Louisiana CSP (under 40 CFR 51.123 and 97.143) and establish specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the CAIR FIPs, Louisiana has chosen not to modify the CSP allocation methodology in the CAIR NO_X annual federal trading program. Therefore, EPA will continue to administer the CSP allocations pursuant to the methodology at 40 CFR 97.143.

F. Individual Opt-In Units

The opt-in provisions of CAIR and the States CAIR FIPs' provisions allow for certain non-EGUs (*i.e.*, boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading programs. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance holding and emissions monitoring and reporting requirements as other units subject to that CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the States' CAIR FIPs' trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the States' CAIR FIPs' opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for its CAIR FIP's trading programs to be implemented in the State without the ability for units to opt into the programs.

Consistent with the flexibility given to States in the FIPs' provisions, Louisiana has chosen not to allow non-EGUs to participate in the Louisiana CAIR FIP NO_X Annual and Ozone Season trading programs.

VI. What Is EPA's Analysis of the Section 110(a)(2)(D)(i) Requirements?

The Louisiana CAIR NO_X Trading Program abbreviated SIP revision submitted on July 12, 2007, also addressed the requirements of section 110(a)(2)(D)(i) of the CAA with respect to 8-hour ozone and $PM_{2.5}$. This SIP revision contains provisions that address significant contribution, interference with maintenance, prevention of significant deterioration, and protection of visibility by following approaches described and explained in EPA's August 15, 2006 memorandum, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards."

Louisiana addresses the "significant contribution" and "interference with maintenance" requirements by complying with the requirements of CAIR. EPA promulgated CAIR on May 12, 2005, and concluded that the States will meet their section 110(a)(2)(D)(i) obligations to address the "significant contribution" and "interference with maintenance" requirements by complying with the CAIR requirements. Louisiana has addressed these first two elements by requiring Louisiana CAIR sources to participate in the EPA-administered NO_X annual, NO_X ozone season, and SO_2 cap-and-trade programs; Louisiana incorporated by reference the CAIR model rules for the SO_2 Trading program and has submitted an abbreviated SIP revision that establishes the NO_X annual and ozone season allocation methodologies for use in the Louisiana CAIR NO_X annual and ozone season FIP. Participation in the NO_X annual, NO_X ozone season, and SO_2 trading programs will reduce emissions from the state that would contribute significantly to nonattainment or interfere with the maintenance of the ozone and particulate matter NAAQS in any downwind state.

Louisiana addresses the "prevention of significant deterioration" requirement through their Prevention of Significant Deterioration (PSD) and New Source Review (NSR) programs. Section 110(a)(2)(D)(i)(II) requires States to submit SIPs that contain adequate provisions prohibiting "any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan

for any other State * * * to prevent significant deterioration of air quality."

For ozone, Louisiana has confirmed that major sources in Louisiana are subject to the approved PSD and NSR programs that implement the ozone standard. Additionally, Louisiana has promulgated rule revisions to address requirements of the Phase II Ozone Rule, and this rule is included in the State's 2006 General SIP revisions proposed on April 20, 2007. For $PM_{2.5}$ standards, Louisiana has confirmed that major sources in Louisiana are subject to the approved PSD and NSR programs implemented in accordance with EPA's interim guidance which allows the use of PM_{10} as a surrogate for $PM_{2.5}$ in the PSD and NSR programs.

Louisiana addresses the "protection of visibility" requirement through the regional haze program. Section 110(a)(2)(D)(i)(II) contains a requirement for all States to submit SIPs that contain adequate provisions prohibiting "any source or other type of emission activity within the State from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State * * * to protect visibility."

EPA has previously found that all States contain sources whose emissions are reasonably anticipated to impact visibility adversely in one or more Class I areas. Pursuant to this finding, States are currently under an obligation to submit SIPs that contain measures to address regional haze, including a long-term strategy to address visibility impairment for each Class I area which may be affected by emissions from a State. The States and Regional Planning Organizations are currently engaged in the task of identifying those Class I areas impacted by each State's emissions and developing strategies for addressing regional haze to be included in the States' regional haze SIPs. These SIP submissions are due no later than December 17, 2007. Louisiana intends to submit a regional haze SIP by the submittal deadline to satisfy its obligation to "protect visibility" under section 110(a)(2)(D)(i).

As a result, EPA believes that it is currently premature to determine whether State SIPs for 8-hour ozone or $PM_{2.5}$ contain adequate provisions to prohibit emissions that interfere with SIP measures in other States designed to protect visibility. Accordingly, EPA believes that Louisiana does not need to make a substantive SIP submission to address the "protect visibility" requirement of section 110(a)(2)(D)(i)(II) for the 8-hour ozone and $PM_{2.5}$ NAAQS at this point in time.

VII. Proposed Action

EPA is proposing to approve a revision to the Louisiana SIP, the Louisiana CAIR NO_X Trading Programs Abbreviated SIP revision, submitted on July 12, 2007, by the State of Louisiana (LAC 33:III.506(A) and (B)). We are also proposing to approve revisions to the Louisiana SIP establishing administrative reporting requirements for all Louisiana CAIR programs; these revisions were submitted with the Louisiana CAIR SO_2 Trading Program on September 22, 2006 (LAC 33:III.506(D) and (E)). Louisiana is covered by the CAIR NO_X Annual and Ozone Season FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for NO_X annual and ozone emissions. Under this abbreviated SIP revision and consistent with the flexibility given to Louisiana in its CAIR NO_X Annual and Ozone Season FIPs' provisions, the Louisiana provisions for allocating allowances under the Louisiana CAIR FIPs' NO_X annual and ozone season trading program are proposed as part of the Louisiana SIP. EPA has determined that the abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p)(1) and (ee)(2) with regard to NO_X annual and ozone season allowance allocations. EPA is not proposing any changes to the Louisiana CAIR NO_X Annual and Ozone Season FIPs' provisions, except to the extent that if we finalize the proposed Louisiana CAIR NO_X Trading Programs abbreviated SIP, then EPA, by ministerial action, will note in Appendix A.1. to Subpart EE of 40 CFR Part 97, that Louisiana has an approved SIP revision providing for NO_X annual allowance allocations. Similarly, EPA will note in Appendix A to Subpart EEEE of 40 CFR Part 97, that Louisiana has an approved SIP revision providing for NO_X ozone season allowance allocations. Since 40 CFR part 97 provides for automatic revision of the Louisiana CAIR FIP for NO_X annual and ozone season emissions (under 40 CFR 52.984) upon approval of such an abbreviated SIP revision, the Louisiana rules for NO_X annual and ozone season allowance allocations would apply, rather than the Federal rules governing allocations, upon the effective date of approval.

EPA is also proposing that this revision adequately addresses the required elements of 110(a)(2)(D)(i), with the exception of the protect visibility requirement. This requirement will be re-evaluated after the regional haze SIP revision is completed and submitted to EPA.

VIII. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard and indicates that approval will result in ministerial changes to the appropriate appendices of the CAIR FIP's trading rules, and does not alter the relationship or the distribution of power and responsibilities established in the Act. The EPA interprets Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety

risks such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it would approve a state rule implementing a Federal standard. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this proposed rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (1 5 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 97

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 7, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

[FR Doc. E7–16044 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8455–4]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Arkansas has applied to EPA for Final Authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final Authorization to the State of Arkansas. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 14, 2007.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Arkansas during normal business hours at the following locations: EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533; Arkansas Department of Environmental Quality 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 25, 2007.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E7–16012 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–325; FCC 07–33]

Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to address issues that were left unresolved in the Commission's *Second Report and Order*, FCC 07–33. Specifically, the Commission seeks comment on how to ensure that the amount of subscription-based radio service is limited, whether the Commission can and should impose spectrum fees on portions of the digital bandwidth used by broadcasters to provide subscription services, whether statutory requirements and subscription regulations should apply to subscription-based services, whether any new public interest requirements should be imposed on digital audio broadcasters, whether enhanced public disclosure rules should apply to radio stations, and whether the rules regarding unattended stations should be reviewed and modified.

DATES: Comments for this proceeding are due on or before October 15, 2007; reply comments are due on or before November 13, 2007.

ADDRESSES: You may submit comments, identified by MM Docket No. 99–325, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Ann Gallagher, *Ann.Gallagher@fcc.gov* of the Media Bureau, Audio Division, (202) 418–2716, or Brendan Murray, *Brendan.Murray@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order, First Order on Reconsideration,* and *Second Further Notice of Proposed Rulemaking,* FCC 07–33, adopted on March 22, 2007, and released on May 31, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Summary of the Notice of Proposed Rulemaking

1. Preserving the existing system of free over-the-air terrestrial radio service as radio stations convert to digital broadcasting remains important. In order to accomplish this goal, we seek comment on how to ensure that the amount of subscription-based radio services is limited. For example, should we implement a requirement which states that no more than 20 to 25 percent of a station's digital capacity be devoted to subscription services? In the digital television context, we have not imposed a specific cap on the amount of subscription services that could be offered. Rather, we have permitted television stations to use their digital capacity for any purpose as long as they transmit at least one over-the-air video program signal at no direct charge to viewers. This estimate is based on current analog FM SCA usage and the scalability of the digital stream in 1 kbps or smaller increments. How should any limitation on digital subscription services be specified—in terms of occupied bandwidth, or in terms of total digital capacity? Would limiting digital subscription services to 20 to 25 percent be sufficient to ensure that the free over-the-air radio service is not compromised? Should there be different rules for NCE radio stations? What kinds of subscription services do radio stations, both NCE and commercial, plan to offer once they commence digital broadcasting? For example, iBiquity states that it will continue to develop new applications for DAB including store and replay, on-demand services, and a "buy button." iBiquity has not made it clear whether these services would be offered on a subscription basis. Would any subscription services be broadcast services? With regard to DTV, Congress explicitly authorized the Commission to permit digital television stations to offer ancillary and supplementary subscription-based services. Given that there is no similar statutory provision for DAB, we will proceed cautiously to ensure that free over-the-air service is preserved. We note that radio stations are permitted to offer subscription services during the pendency of this *Second Further Notice of Proposed Rulemaking,* but are put on notice that we will adopt new rules in this area that may affect such offerings.

2. In the *DAB FNPRM,* we sought comment on whether we can and should impose spectrum fees for that portion of digital bandwidth used by broadcasters to provide subscription services. Given that we are further considering the issues surrounding the provision of subscription services, we now seek additional input from the public on the fee issue. With regard to DTV, Congress authorized the Commission to impose a fee on certain ancillary or supplementary services. The Commission subsequently adopted a rule requiring DTV licensees to pay a fee of five percent of the gross revenues derived from all ancillary or supplemental services that are feeable, as defined by the rules. Given that no express statutory authority exists in the DAB context, do we have the authority to impose a five percent or other fee based on the Commission's jurisdiction ancillary to its regulation of broadcasting? Can we, therefore, impose a similar fee for subscription digital radio? What limits should we place on subscription services, particularly if we are unable to impose a fee? Should broadcasters have to provide a free digital stream at least equal in quality to the best subscription service if they decide to provide a subscription service?

3. In the *Second Report and Order* (published elsewhere in this issue), we rule that several statutory requirements and Commission regulations would apply to all free over-the-air digital programming streams. Here, we seek comment on whether those same requirements, as outlined in Section D.1, above, should apply to subscription services. We note that the Commission has applied certain public interest obligations to other subscription services, including cable television and satellite radio, pursuant to our authority to regulate subscription services ancillary to the regulation of broadcasting. We tentatively conclude that we should apply the requirements outlined above to subscription services offered by terrestrial radio stations, and that we have the statutory authority to do so. We seek comment on this tentative conclusion.

4. As stated above, the Commission must ensure that broadcast radio and television stations serve the "public interest, convenience and necessity." To ensure that broadcasters serve the public interest, convenience and necessity, the Commission requires licensees to comply with various program-related and operational duties. Broadcasters, for example, are required to air programming responsive to community needs and interests and have other service obligations. We will continue to enforce our statutory mandate to ensure that broadcasters serve the public interest, and remind broadcasters of the importance of meeting their existing public interest obligations. As stated above, IBOC provides broadcasters the potential for a more flexible and dynamic use of the radio spectrum and raises questions

about the nature of program-related and operating obligations in digital broadcasting because the scope of those responsibilities has not been defined. Certain parties have proposed new public interest requirements for DAB, while others have argued that there is no reason to change our existing rules. We seek comment on whether we should adopt any new public interest requirements for digital audio broadcasters.

5. In the context of examining possible changes to television station public interest obligations in the digital environment, the Commission is considering whether the current requirements pertaining to television stations' public inspection files are sufficient to ensure that the public has adequate access to information on how the stations are serving their communities. As we undertake an examination of possible changes to radio station public interest obligations in the digital environment, we believe it is also appropriate to consider whether the current requirements for radio stations' public inspection files are sufficient to ensure that the public has adequate access to information on how these stations are serving their communities. In the Enhanced Disclosure NPRM, we proposed that television broadcast station licensees should use a standardized form to provide information on how the station serves the public interest in a variety of areas, and that the form should be provided on a quarterly basis and maintained in the station's public inspection file in place of the currently required issues/programs lists. We also proposed to enhance the public's ability to access public interest information by requiring licensees to make the contents of their public inspection files, including the form, available on the station's or a state broadcasters association's Internet Web site. We seek comment on whether we should consider applying such rules to radio stations, whether operating in analog or digital. Would the benefits or burdens of requiring the public inspection file to also be placed on the Internet be the same, lesser, or greater for radio stations than for television stations? In what specific ways, if any, should the rules differ for radio? Are there ways we can reduce the burden on small radio stations?

I. Procedural Matters

A. Filing Requirements

6. *Ex Parte Rules.* The *Second Further Notice of Proposed Rulemaking* in this proceeding will be treated as a "permit-but-disclose" subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

7. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

8. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bill.cline@fcc.gov.* These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488–5300 or (800) 378–3160; by e-mail at *fcc@bcpiweb.com*; or via their Web site at *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

9. *Additional Information.* For additional information on this proceeding, contact Ann Gallagher, *Ann.Gallagher@fcc.gov*, of the Media Bureau, Audio Division, (202) 418–2716 or Brendan Murray, *Brendan.Murray@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

B. Initial and Final Regulatory Flexibility Analysis

10. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). By the issuance of this *Second Further Notice of Proposed Rulemaking*, we seek comment on the impact our suggested proposals would have on small business entities.

11. *Act.* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Second Report and Order and First Order on Reconsideration.*

C. Paperwork Reduction Act Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice of Proposed Rulemaking.* The Commission will send a copy of this entire *Second Further Notice of Proposed Rulemaking ("FNPRM")*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the *Second Further Notice of Proposed Rulemaking* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

13. *Need for, and Objectives of, the Proposed Rules.* The *Second FNPRM* has been initiated to obtain further comments concerning the development and implementation of terrestrial digital audio broadcasting. Because free over-the-air terrestrial broadcasting is in the public interest, and because spectrum is a limited resource, in the *Second FNPRM* the Commission seeks comment on how to limit ancillary subscription services provided by radio stations converting to the IBOC DAB format so that terrestrial radio broadcasting remains an essentially free over-the-air service. The Commission also seeks comment on, *inter alia*, the application of several statutory and regulatory public interest requirements to subscription services.

14. *Legal Basis.* The authority for this *Second Further Notice of Proposed Rulemaking* is contained in Sections 1, 2, 4(i), 303, 307, 312(a)(7), 315, 317, 507. and 508 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, 312(a)(7), 315, 317, 508, and 509.

15. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

16. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6.5 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

17. *Electronics Equipment Manufacturers.* The rules adopted in this proceeding will apply to manufacturers of DAB receiving equipment and other types of consumer electronics equipment. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment. Under this standard, firms are considered small if they have 1000 or fewer employees. Census Bureau data for 2002 indicate that, for that year, there were a total of 1,041 establishments in this category. Of those, 1,023 had employment under 1,000. Given the above, the Commission estimates that the great majority of equipment manufacturers affected by these rules are small businesses.

18. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The proposed rules on subscription services may impose additional reporting or recordkeeping requirements on existing radio stations, depending upon how the Commission decides to limit subscription services. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any

possible compliance burdens on small entities might be appropriate.

19. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. In the *Second Report and Order*, the Commission permits radio stations to offer high quality digital radio signals, multicast digital audio programming streams, and datacasting. In the *Second Further Notice of Proposed Rulemaking*, the Commission seeks comment on what limitations on ancillary subscription services are necessary and appropriate to ensure the viability of free over-the-air radio broadcasting. This is an issue of first impression for the Commission; there is no history that indicates whether limits on ancillary subscription services will be adverse or beneficial to small businesses. Therefore, we make no judgment on whether limits on ancillary subscription services will adversely affect small business. We welcome commenters to address whether limits on ancillary subscription services will have any adverse effects on small businesses.

21. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

22. The Commission will send a copy of the *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking and FRFA (or summaries thereof) will also be published in the **Federal Register**.

II. Ordering Clauses

23. Accordingly, *it is ordered*, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 307, 312, 315, 317, 507, and 508 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, 312, 315, 508, and 509, *this Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking* is adopted.

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

List of Subjects in 47 CFR Part 73

Digital television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–3958 Filed 8–14–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3416; MB Docket No. 07–143; RM–11381]

Radio Broadcasting Services; Charlo, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Spanish Peaks Broadcasting, Inc. ("Petitioner") proposing the allotment of Channel 251C3 at Charlo, Montana. The proposed coordinates are 47–32–20 NL and 114–08–52 WL with a site restriction of 11.3 kilometers (7.0 miles) north of Charlo, Montana.

DATES: Comments must be filed on or before September 17, 2007, and reply comments on or before October 2, 2007.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner as follows: Kevin Terry, President, Spanish Peaks Broadcasting, Inc.; 3702 Sunridge Drive; Park City, Utah 84098.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 07–143, adopted July 25, 2007, and released July 27, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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 Montana, is amended by adding Charlo, Channel 251C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–15900 Filed 8–14–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Yellowstone National Park Bison Herd as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Yellowstone National Park (YNP) bison herd as endangered under the Endangered Species Act of 1973, as amended (Act). On the basis of our review of the petition and information readily available in our files, we have determined that there is substantial information indicating that the YNP bison herd may meet the criteria of discreteness and significance as defined by our policy on distinct vertebrate population segments (DPS). However, we have also determined that there is not substantial information indicating that listing the YNP bison herd under the Act may be warranted throughout all or a significant part of its range. We will not initiate a status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of the YNP bison herd or threats to it or its habitat at any time. This information will help us monitor and encourage the conservation of the species.

DATES: The finding announced in this document was made on August 15, 2007. New information concerning this species may be submitted for our consideration at any time.

ADDRESSES: Data, information, comments, or questions concerning this petition finding should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 134 Union Boulevard, Suite 645, Lakewood, Colorado 80228. The petition finding and supporting information will be available for public inspection, by appointment, during normal business hours at the above address. The petition and finding are available on our Web site at *http://r6.fws.gov/mammals/bison*.

FOR FURTHER INFORMATION CONTACT: Michael Stempel, Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service (see **ADDRESSES** section) (telephone 303–236–4253; facsimile 303–236–0027).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register.**

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and information otherwise available in our files, and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

Mr. James Horsley of Moorhead, Minnesota, filed a petition dated January 5, 1999, with the Secretary of the Interior to list the "herd of buffalo at the Yellowstone National Park" "because it is endangered in a significant portion of its range." Mr. Horsley requested that the Service list the herd as a subspecies or "distinct population group," and to designate critical habitat in and adjacent to YNP. The Service received the petition on February 11, 1999. Action on this petition has been precluded until now because of higher priority listing actions. This finding does not consider critical habitat, which would only arise with a positive 12-month finding.

Biology and Distribution

The bison (also referred to as the American buffalo) is a member of the family Bovidae, which includes domestic cattle. Two subspecies of bison are currently recognized in North America—the plains bison (*Bison bison bison*) and the wood bison (*Bison bison athabascae*) (Boyd 2003, pp. 28–31). The species once ranged across central and western North America, but market hunting nearly extirpated the herds by the 1880s.

Numerous Federal, State, and private bison herds currently exist in the United States, but YNP is the only area in the United States where bison have existed in the wild state since prehistoric times (Gates *et al.* 2005, p. 92). Boyd (2003, p. 38) estimated the plains bison population in North America at 500,000, and identified 50 herds (containing approximately 19,200 head) currently being managed with clear conservation objectives.

Many of the numerous bison herds currently extant in the United States and Canada were reconstituted from stock that was used to develop bison-cattle hybrids (Boyd 2003, p. 23). Research on 11 Federal herds revealed that the bison herd in YNP was 1 of 3 that showed no evidence of genetic introgression with cattle (Halbert 2003, pp. 86–87) based on the alleles examined. (Introgression occurs when the genes of one species infiltrate the genes of another through repeated crossings.) The other two herds were Wind Cave National Park in South Dakota and Grand Teton National Park in Wyoming (Halbert 2003, p. 87), although the Grand Teton sample size was small so confidence in the results is lower than that for Wind Cave. More recently, the bison herd at Sully's Hill National Game Preserve in North Dakota has been sampled and is not known to be introgressed, although the sample size was small (Roffe 2005).

Halbert (2003, pp. 44–45) found only four of the Federal herds made positive contributions to overall bison genetic diversity (measured in terms of allelic richness and gene diversity). Those herds were: YNP, National Bison Range (Montana), Wichita Mountains National Wildlife Refuge (Oklahoma), and Wind Cave.

The winter 2005–2006 count of the YNP bison herd estimated the herd size at 3,546 bison (Geremia and Wallen 2006), and the most recent summer count estimated the herd size at 4,500 bison (Wallen 2007).

Subspecies

The bison in Yellowstone National Park are considered to be plains bison

(*Bison bison bison*). As mentioned previously, Boyd (2003, p. 38) estimated the plains bison population in North America at 500,000, and identified 50 herds (containing approximately 19,200 head) currently being managed with clear conservation objectives. Given the abundance and management status of the subspecies, we have concluded that the petition has not presented substantial information indicating that its listing under the Act may be warranted.

Distinct Vertebrate Population Segment

The petitioner asked us to list the YNP bison herd as a "distinct population group." We assume that the petitioner meant a Distinct Vertebrate Population Segment (DPS) for purposes of listing under the Act. Under section 3(15) of the Act, we may consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa. In determining whether an entity constitutes a DPS, and is therefore listable under the Act, we follow the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) (61 FR 4722; February 7, 1996). Under our DPS Policy, we must address three analytical steps prior to listing a possible DPS: (1) The discreteness of the population segment in relation to the remainder of the taxon; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened) (61 FR 4722, February 7, 1996). This finding considers whether the petition states a reasonable case that the petitioned population may be a DPS.

Discreteness

Under the DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist (61 FR 4722, February 7, 1996).

Information Provided in the Petition on Discreteness

The petitioner asserts that the YNP bison "herd is the only wild, unfenced buffalo herd in the nation," but no specific citations are provided to support this conclusion. Information in our files support the conclusion that the YNP bison population is the only herd in the United States that has remained in a wild state since prehistoric times (Gates *et al.* 2005, p. 93). All other bison in the United States are reconstituted herds and are confined with fencing, or otherwise range restricted. Individuals from the Jackson bison herd in Grand Teton National Park and the National Elk Refuge have been known to migrate north into YNP, but this is a rare occurrence (Gates *et al.* 2005, p. 109). Therefore, we find that the YNP bison herd may be discrete from other members of the taxon *Bison bison* because of physical distance and barriers.

Significance

Under our DPS Policy, in addition to our consideration that a population segment is discrete, we consider its biological and ecological significance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unique or unusual for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4721; February 7, 1996).

Information Provided in the Petition on Significance

The petitioner asserts that the YNP bison herd is significant within the meaning of our DPS policy because it is the last wild, unfenced herd in the United States, and exhibits quasi-migratory behavior when members of the herd leave YNP during the winter in search of food. The petition also asserts that the herd may be a unique hybrid of the wood and plains bison, and the herd has historical and cultural significance to Native Americans. No citations are provided to substantiate these statements.

(1) *Evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon.* The petitioner asserts that YNP is the only area in the lower 48 States where bison have existed in the wild state since prehistoric times. This statement is consistent with Gates *et al.* (2005, p. 245), and indicates that the YNP bison herd may exist in a unique ecological setting within the meaning of our DPS Policy.

The petitioner's assertion that the YNP bison were important to Native Americans also is supported by Gates *et al.* (2005, p. 77) (e.g., "The Lamar Valley and the Yellowstone River Valley north to Livingstone was an important area for bison and Native peoples throughout the Holocene."). We agree with the petitioner that the YNP bison herd has substantial cultural and historical value. However, the significance criteria in our DPS Policy are based on biological factors identified in the Act that show that the population is significant to the taxon, and not on human cultural or historical significance. Therefore, we did not evaluate cultural and historical significance in our DPS analysis, but rather relied solely on the scientific criteria in the DPS Policy.

The petitioner asserts that the YNP is significant because of its "quasi-migratory behavior." Gates *et al.* (2005, p. 160) concludes that YNP is a forage-limited system, and that, "Bison move beyond park boundaries in winter in response to forage limitation caused by interactions between population density, variable forage production (driven by spring/early summer precipitation), snow conditions, and herbage removal primarily by bison and elk." Winter movement of large herbivores, such as bison and elk, in search of forage is normal behavior. The fact that bison and elk range outside the Park is not unusual. Based on this information, we would not consider the YNP bison herd movements to winter range outside the Park boundary as a unique behavior within the meaning of our DPS Policy.

(2) *Evidence that loss of the population segment would result in a significant gap in the range of the taxon.* The petition alleges that the YNP bison herd is the only remaining wild, unfenced bison herd. As discussed under "Biology and Distribution," there are 3 other Federal bison herds that show no evidence of introgression with domestic cattle, based on sampling done to date. Because of the limited number and extent of bison herds that show no evidence of introgression with domestic cattle, we find that loss of the YNP

bison herd might result in a significant gap in the current range of the taxon.

(3) *Evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range.* The petition provides no specific information to indicate that the YNP bison herd would meet this criterion. As noted above, Gates *et al.* (2005, p. 245) indicate that YNP is the only area in the lower 48 States where bison have existed in a wild state since prehistoric times. Bison originally ranged across western North America; because numerous herds have been reintroduced in the historic range, we have determined that the YNP herd is not the only surviving natural occurrence within its range. Additionally, the species is not more abundant elsewhere outside its historic range.

(4) *Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.* The petition alleges that the YNP bison herd may be a unique hybrid of the wood and plains bison. No citations are provided, but this conclusion was stated in Meagher (1973, pp. 14–16), who considered the "mountain" bison a separate species. This controversy has since been resolved, and YNP staff now considers the remnant population, as well as the introduced bison, as being of plains bison origin (Boyd 2003, pp. 182–183; Wallen 2006).

Additional information in our files compiled after this petition was submitted indicates that the YNP bison herd is one of three Federal herds that do not display genetic introgression with cattle. Maintenance of genetic diversity is an important long-term goal for management of species populations. Halbert (2003, p. 94), concluded her study by stating: "In conclusion, this study has assessed levels of domestic cattle introgression in 10 federal bison populations and identified at least 2 populations, Wind Cave and YNP, which at this time do not have any evidence of domestic cattle introgression and also have high levels of unique genetic variation in relation to other federal populations. As such, these populations should be given conservation priority * * *" Thus, we conclude that the YNP bison herd satisfies this genetic criterion of significance under the DPS Policy.

DPS Determination

The Grand Teton National Park/National Elk Refuge bison herd is separate from the YNP herd (Gates *et al.* 2005, p. 93), and there are less than a dozen other unconfined bison herds in the entire lower 48 States (Gates *et al.* 2005, p. 2). Therefore, the YNP herd is discrete from other members of the taxon. Recent genetic research confirms that the YNP bison herd is significant because of a lack of nuclear domestic cattle introgression. Although 3 other Federal herds exhibit this characteristic, the YNP bison are the only remnant population that has remained in a wild state since prehistoric times and, therefore, is important to the management of bison genetic diversity. Halbert (2003, pp. 44–45) found only four Federal herds that were sufficiently unique to contribute significantly to overall bison genetic diversity.

On the basis of the preceding discussion, we believe that there is substantial information to conclude that the YNP bison herd may be discrete and significant within the meaning of our DPS Policy, and therefore may constitute a DPS.

According to our DPS Policy, if a population of a species is found to be both discrete and significant, we then evaluate the conservation status of the population in relation to the listing factors found in section 4(a)(1) of the Act. Our assessment of the conservation status of the YNP bison herd, based on the information provided in the petition and our files, is provided in the "Conservation Status" section below.

Conservation Status

Pursuant to section 4(a) of the Act, we may list a species of a taxon on the basis of any one of the following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other manmade or natural factors affecting its continued existence.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition asserts that the natural range of the YNP bison herd is being curtailed by the interruptions of its members' attempts to move out of the Park. The petitioner alleges that in 1996 the herd numbered approximately 3,000 head, and that over 1,000 of these bison were "slaughtered" outside YNP in the winter of 1996–1997, which threatened the "quasi-migratory" behavior of the herd.

The petitioner is correct concerning the culling of YNP bison outside the Park in the winter of 1997. Since the 1920s, bison that venture out of YNP into Montana have been subject to various lethal and non-lethal measures to control brucellosis (Gates *et al.* 2005, p. 83), which is a contagious, costly disease of ruminant (cud-chewing) animals, such as bison, cattle, and swine. Since 1934, there has been a national Cooperative State-Federal Brucellosis Eradication Program, because the disease causes decreased milk production, weight loss in livestock, loss of young, infertility, and lameness (*http://www.aphis.usda.gov/vs/nahps/brucellosis/*). Culling of bison in interior YNP for population and brucellosis control ceased in 1968 (Gates *et al.* 2005, p. 87).

However, the population data for the YNP bison herd do not support the petitioner's assertion that the 1997 bison mortality in Montana threatens the herd or its range. Since the winterkill and lethal brucellosis control actions in Montana during 1997, the YNP bison herd has continued to grow despite culling for population and brucellosis control, and currently numbers approximately 4,500 head (Wallen 2007). Additional information on culling is provided under Factor B.

The petitioner's assertion that hazing and killing of bison outside the Park will affect the "quasi-migratory" behavior of the herd, and will result in a restriction of the range is not supported by information available in our files. Bison in YNP attempt to compensate for declining per capita food resources by range expansion (Gates *et al.* 2005, p. 131). In other words, bison move out of the Park in the winter in search of food, and this pattern has continued since implementation of the Joint Bison Management Plan (discussed in greater detail under Factor D) in 2000 (Clarke *et al.* 2005, p. 29). Therefore, the available information indicates that control actions have not affected the "quasi-migratory" ranging behavior of the YNP herd.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

As mentioned under Factor A, the petitioner alleges that in 1996 the herd numbered approximately 3,000 head, and that over 1,000 of these bison were "slaughtered" outside YNP in the winter of 1996–1997. The petition claims that "Half the herd is now gone due to their slaughter."

However, as stated under Factor A, the population data for the YNP bison herd do no support the contention that half the herd is now gone due to lethal

control. In fact, since the winterkill and lethal brucellosis control actions in Montana during 1996–97, the YNP bison herd has continued to grow, and currently numbers approximately 4,500 head (Wallen 2006). Breeding success has been steady for at least 100 years, in spite of culling for population and brucellosis control (Fuller 2003, pp. 21–28). As part of the Joint Bison Management Plan, variable numbers of bison may be removed from the herd to maintain optimal population size and for brucellosis control. In addition, the Joint Bison Management Plan establishes that when the population drops to 2,300 bison, measures to protect bison will be increased. Management mortality would cease if the herd drops to 2,100 head. The herd may stabilize at about 3,500 to 3,800 head, but could fluctuate over time based on the severity of winter weather (USDI and USDA 2000, pp. 51–52).

Factor C. Disease or Predation

The petitioner provides no information on this factor, and we have no information in our files to indicate that the current conservation status of the YNP bison herd is affected by disease or predation. Although brucellosis is endemic to the herd, the disease does not appear to be a threat because the population continues to grow at a rate of between 5 and 8 percent (Fuller 2006, pp. 21–24). The Joint Bison Management Plan provides a detailed set of procedures for managing the YNP bison herd in conjunction with the brucellosis control program in Montana.

Gates *et al.* (2005, p. 51) concluded that predation may become increasingly important as reintroduced wolves learn how to kill bison, but there is no information in our files to indicate that predation is a threat at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The petitioner implies that existing regulatory mechanisms are inadequate to ensure protection of the YNP bison herd because some animals are killed outside the Park. We are assuming that, based on the information in our files, the petitioner is referring to lethal control of bison in conjunction with Montana's brucellosis control program.

During the 1990s, a Bison Management Plan for the State of Montana and YNP (Joint Bison Management Plan) was developed. A Final Environmental Impact Statement and Record of Decision on the plan was issued by the Department of the Interior and the Department of Agriculture on December 20, 2000 (available at *http://www.planning.nps.gov/document/yellbisonrod%2Epdf*). The Joint Bison Management Plan provides a detailed set of procedures for managing the YNP bison herd in conjunction with the brucellosis control program in Montana.

The Joint Bison Management Plan has a population target of greater than 2,100 bison (USDI and USDA 2000, pp. 51–52). The plan contains contingency measures to assure that the conservation status of the herd remains secure. If exigent circumstances arise during severe winters, the agencies agree to temporarily modify elements of the plan to mitigate total removal of bison. If the bison population declines to 2,300 within a single winter, the agencies will meet to evaluate modifications to the prevailing management prescriptions that could reduce the total management removal of bison from the population (USDI and USDA 2000, p. 52). If the bison population declines below 2,100 within a single winter, the agencies will, on a temporary basis for that winter, increase implementation of non-lethal management measures. One of the primary goals of the Joint Bison Management Plan is to provide for a "free-ranging bison herd" (USDI and USDA 2000, p. 6). The herd may stabilize at about 3,500 to 3,800 head, but could fluctuate over time based on the severity of winter weather (USDI and USDA 2000, pp. 51–52). This size range was identified by YNP staff as sufficient to protect the long-term status of the herd. The latest conservation genetics information indicates that a population in this range should be able to sustain the current level of genetic diversity indefinitely without the need for introducing immigrants from other populations (Wallen 2006).

The Joint Bison Management Plan Status Review Team recently completed an analysis of the adaptive management elements of the plan (Clarke *et al.* 2005, pp. 28–29). With regard to YNP bison population abundance, the team found that the abundance of bison has grown steadily since the implementation of the Joint Bison Management Plan (see Figure 1). The population reached almost 4,900 head in the summer of 2005, and now numbers around 4,500. Winter weather conditions have been mild to average during the first 5 years, and the population has not dropped below 2,300 bison. The late winter population has been above the population target and management decision threshold of 3,000 head in 4 of the 5 years of implementation (Clarke *et al.* 2005, p. 28). Management-related mortality has resulted in greater than 200 bison removed during 3 of the 5 winters, but the population continues to expand (Clarke *et al.* 2005, p. 28). Based on this information we concur with the Status Review Team that the Joint Bison Management Plan is working with regard to successful management of the YNP bison herd.

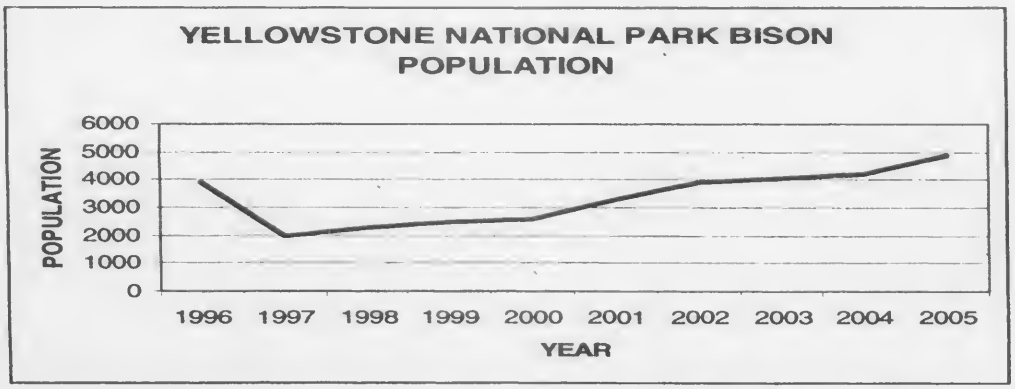

Figure 1. Population numbers from Gates et al. (2005) and Clarke et al. (2005).

Factor E. Other Manmade or Natural Factors Affecting Its Continued Existence

The petitioner provided no information on this factor, and we have no information in our files to indicate that possible circumstances in this category affect the YNP bison herd.

Conclusion of the 5-Factor Analysis

As required by the Act, we considered the five potential threat factors to assess whether there is substantial information to indicate that the potential Yellowstone National Park (YNP) bison herd DPS may be threatened or endangered throughout all or a significant portion of its range. The first step in this assessment is to determine whether there is substantial information that the DPS may be threatened or endangered throughout all of its range. If this is the case, then we make a positive 90-day finding for the DPS in its entirety. If it is not the case, we must next consider whether there is substantial information that there may be any significant portions of its range that are in threatened or endangered.

On the basis of our review of the petition and other information readily available in our files, we have concluded that the petition does not present substantial information that listing the potential YNP bison herd DPS as threatened or endangered throughout all of its range may be warranted. The petition is based primarily on the threat of excessive killing of bison that venture outside YNP in order to prevent the spread of brucellosis to domestic livestock. However, we found no information to indicate that brucellosis control efforts, either previous or ongoing, threaten the continued existence of the potential YNP bison herd DPS. A large number of bison did die during the severe winter of 1996–97 due to the combined effects of natural causes and human control efforts, but the herd itself was not threatened by this mortality. A Joint Bison Management Plan for the YNP bison herd (USDI and USDA 2000), completed and implemented approximately one year after the petition was provided to the Service, provides mechanisms to address the impacts of brucellosis control actions on the herd while maintaining a self-sustaining bison herd in and adjacent to YNP. In addition, the population data for the YNP bison herd indicate that, since the winterkill and lethal brucellosis control actions in Montana during 1996–97, the YNP bison herd has continued to grow despite culling for population and brucellosis control, and currently numbers approximately 4,500 head.

Having determined that the potential YNP bison herd DPS does not meet the definition of threatened or endangered, we must next consider whether there are any significant portions of its range that where the herd is danger of extinction or is likely to become endangered in the foreseeable future. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range'" (USDI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range (in this case, "species" refers to the potential YNP bison herd DPS) is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms "resiliency," "redundancy," and "representation" are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering. Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy is important to the conservation of the species. Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we next addressed whether any portions of the range of the potential YNP bison herd DPS warranted further consideration. According to Gates *et al.* (2005), most bison in the YNP herd are confined within Yellowstone National Park for all or most of the year. Rut takes

place within YNP from around mid-July to mid-August (Meagher, 1973) in one of three rutting areas—the largest rutting aggregation is in the Hayden Valley, the second largest in the eastern Lamar Valley, and a small aggregation occurs in small high elevation grasslands on the Mirror Plateau and Cache/Calfee Ridge (Gates *et al.* 2005). Most bison remain in YNP during winter, especially in the geothermally-influenced central portion of the Park. Calves are born in April–May on the winter range (Meagher 1973). For these reasons we have determined that there is substantial information that Yellowstone National Park may constitute a significant portion of the range for the potential YNP bison herd DPS.

In late winter/early spring, varying numbers of bison may move outside the Park's boundaries into Montana near West Yellowstone and Gardiner looking for forage. Bison that move outside YNP usually return by late spring (YNP, 2007). The proportion of Yellowstone bison that move to winter ranges outside YNP varies from 3 to 30 percent per year, depending on conditions (YNP, 2007). Bison move beyond Park boundaries in late winter in response to forage limitation caused by interactions between population density, variable forage production, snow conditions, and grazing competition (Gates *et al.* 2005). The Gardiner basin has been considered important winter range for bison since at least the 1940s and is an important component of the Northern winter range; in contrast, the West Yellowstone area does not have unique ecological value as winter range according to Gates *et al.* (2005). For these reasons we believe there is substantial information that the Gardiner basin provides resiliency to the herd during harsh winters, and, therefore, may constitute a significant portion of the range for the potential YNP bison herd DPS.

On the basis of our review of the petition and other information readily available in our files, we have concluded that the petition does not present substantial information that the Yellowstone bison herd may be threatened or endangered in either of the potentially significant portions of the range as outlined in the two previous paragraphs. Management of the Yellowstone bison herd is guided by a Joint Bison Management Plan for the YNP bison herd (USDI and USDA 2000). Management of bison within the Park is the responsibility of the National Park Service. Culling of bison in interior YNP for population and brucellosis management stopped in 1968 (Gates *et al.* 2005). Population data for the YNP bison herd indicate that, since the winterkill and lethal brucellosis control actions in Montana during 1996–97, the YNP bison herd has continued to grow despite culling for population and brucellosis control, and currently numbers approximately 4,500 animals. We therefore conclude that the petition does not present substantial information indicating that listing the Yellowstone bison herd within YNP may be warranted.

Outside YNP, management of bison is primarily the responsibility of the State of Montana (USDI and USDA 2000). Bison that leave YNP are subject to hazing and lethal control as a part of the brucellosis control program, but the Joint Bison Management Plan provides conservation measures that eliminate the control program as a threat to the continued existence of the herd. We therefore conclude that the petition does not present substantial information indicating that listing the Yellowstone bison herd on the winter range outside YNP may be warranted.

In summary, we have determined that the petition has not presented substantial information indicating that the potential YNP bison herd DPS may warrant listing as threatened or endangered throughout all or any significant portion of its range. Although we will not be initiating a status review in response to this petition, we ask the public to submit to us any new information that becomes available concerning the status of the YNP bison herd or threats to it or its habitat at any time. This information will help us monitor and encourage the conservation of the species.

References

A complete list of all references cited herein is available on request from the Region 6 Endangered Species Program, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this document is Chuck Davis, Region 6 Endangered Species Program, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 6, 2007.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–16004 Filed 8–14–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 157
Wednesday, August 15, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Draft Food for Peace P.L. 480 Title II Program Policies and Proposal Guidelines (FY08)

Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480, as amended), notice is hereby given that the Draft Food for Peace P.L. 480 Title II Program Policies and Proposal Guidelines (FY 08) are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–136, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600. The draft guidelines may also be found at *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/*. Individuals who have questions or comments on the draft guidelines should contact both Juli Majernik (at the above address, by phone at (202) 712–4088, or by e-mail at *jmajernik@usaid.gov*) and copy AMEX International, Inc., at *ffpdocs@amexdc.com*. The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Juli Majernik,

Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. E7–15979 Filed 8–14–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket Number: AMS–CN–07–0093; CN–07–007]

Proposal To Reestablish the Advisory Committee on Universal Cotton Standards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to reestablish the Advisory Committee on Universal Cotton Standards.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to reestablish the Advisory Committee on Universal Cotton Standards (Committee). The Committee reviews official Universal Standards for American Upland cotton prepared by USDA and would make recommendations regarding the establishment or revision of standards.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224, telephone 202–720–2145, facsimile 202–690–1718, or e-mail at *darryl.earnest@usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture is considering the reestablishment of the Advisory Committee, which would be composed of foreign and domestic representatives of the cotton industry. The purpose of the Committee would be to review official Universal Standards for U.S. Upland cotton prepared by USDA and make recommendations regarding establishment or revision of the standards established under the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The last Advisory Committee on Universal Cotton Standards was established August 6, 2004. The Advisory Committee's term ended in 2006.

Equal opportunity practices, in line with USDA policies, would be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of diverse groups served by the Department, membership would include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Balanced committee membership would be attained domestically and internationally through the following Committee composition.

Representation by Domestic Industry

The U.S. cotton industry's committee membership would be comprised of 12 producers and ginners, 6 representatives of merchandising firms, and 6 representatives of textile manufacturers. These representatives would be appointed by the Secretary of Agriculture.

Each member would have one vote. Accordingly, voting privileges will be divided as follows: (1) U.S. cotton producers and ginners—12 votes; (2) U.S. merchandising firms—6 votes; (3) U.S. textile manufacturers—6 votes.

Representation by Foreign Signatory Associations

There would be 2 committee members designated from each of the foreign signatory associations. These committee members would be designated by the respective associations. Voting privileges would be divided as follows: (1) Foreign signatory merchant associations—6 votes; (2) Foreign signatory spinner associations—6 votes.

Domestic members selected for the committee shall serve without pay, but with reimbursement of travel expenses and per diem for attendance at the committee meeting.

Dated: August 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–15950 Filed 8–14–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–LS–07–0102; LS–07–13]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, 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 Agricultural Marketing

Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension and revision of a currently approved information collection used to compile and generate the livestock and meat market reports for the Livestock and Grain Market News Branch of the Livestock and Seed Program.

DATES: Comments on this notice must be received by October 15, 2007 to be assured of consideration.

Additional Information or Comments: Comments may be mailed to Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Program, AMS, USDA; STOP 0252; Room 2619–S; 1400 Independence Avenue, S.W., Washington, DC 20250–0252; Phone (202) 720–8054; Fax (202) 690–3732; e-mailed to the Federal eRulemaking Portal: *http://www.regulations.gov*, or e-mailed to *marketnewscomments@usda.gov*. State that your comments refer to Docket No. AMS–LS–07–0102; LS–07–13.

FOR FURTHER INFORMATION CONTACT: Dr. Warren Preston, Chief, Livestock and Grain Market News Branch, AMS, USDA, by telephone on 202/720–4846, or via e-mail at: *warren.preston@usda.gov* or Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, AMS, USDA, by telephone on 202/720–8054, or e-mail at: *jimmy.beard@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Livestock and Meat Market Reports.

OMB Number: 0581–0154.

Expiration Date of Approval: 02–29–2008.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et. seq.*) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

Under this market news program, AMS issues market news reports covering the livestock and meat trade, which encompasses a wide range of industry contacts, including packers, processors, producers, brokers, and retailers. These reports are compiled on a voluntary basis, in cooperation with the livestock and meat industry. The information provided by respondents initiates market news reporting, which must be timely, accurate, unbiased, and continuous if it is to be meaningful to the industry. The livestock and meat industry requested that AMS issue livestock and meat market reports in order to assist them in making informed production and marketing decisions. In addition, several Government agencies that purchase meat for various Federal programs use this data in making their purchasing decisions.

Estimate of Burden: Public reporting burden for this collection of information is estimated at .08 hours per response.

Respondents: Business or other for-profit, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 1,710.

Estimated Total Annual Responses: 4,386,150.

Estimated Number of Responses per Respondent: 126.

Estimated Total Annual Burden on Respondents: 215,020 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 the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jimmy A. Beard, 1400 Independence Ave., Room 2619–S, Washington, DC 20250–0252. Comments can be submitted to: *http://www.regulations.gov* and viewed there as well. All comments received will be available for public inspection during regular business hours at the same address and on the Internet at *http://www.ams.usda.gov/lsmnpubs*.

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.

Dated: August 9, 2007.

Lloyd Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–15949 Filed 8–14–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS–FV–07–0036; FV–06–318]

United States Standards for Grades of Pineapples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to revise the United States Standards for Grades of Pineapples. The proposal would replace Tables I and II in the tolerances section with numerical tolerances and numerical application of tolerances. Decay tolerances would also be revised. The proposed revisions would make the United States Standards for Grades of Pineapples more uniform with other existing grade standards and would better serve the industry.

DATES: Comments must be received by October 15, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the internet at *http://www.regulations.gov* or to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture; 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; or fax (202) 720–8871. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Pineapples are available through the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm*.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720–2185.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities

and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is proposing to revise the United States Standards for Grades of Pineapples using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised July 5, 1990.

Background

On September 21, 2006, AMS published a notice in the **Federal Register** (71 FR 55160) soliciting comments for the possible revision of the United States Standards for Pineapples. In response to this notice, AMS received two comments supporting the proposed revision. The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm* as well as *http://www.regulations.gov*.

One comment was from a pineapple producer and the second comment was from a trade association representing wholesale receivers.

The first commenter supported changing the tables in the tolerance section to numerical tolerances. They also suggested revising the "Definitions" and "Classification of Defects" sections of the standard, which they felt would make pineapple inspections more representative of the new hybrid clones. In order to account for new varieties and/or hybrids, AMS continuously updates all of its inspection handbooks, and believes that revising the pineapple inspection handbook to include definitions and classification of certain defects, would allow for new hybrids/varieties to be represented as they are produced and introduced into the marketing chain. Therefore, AMS will review the commentor's suggestions and address any needed revisions in future handbook updates and not in this action.

The second commenter also felt the proposed revision would be beneficial to the industry. The commenter also submitted the following tolerances which they felt would be appropriate for pineapples: Shipping Point: Total Defects 8 percent, Serious Damage 4 percent, Decay ½ of 1 percent. En Route or At Destination: Total Defects 12 percent, Permanent Defects 8 percent, Serious Damage 6 percent, Decay 2 percent. After reviewing the commentor's proposed tolerances, it was determined that the proposed shipping point decay tolerance was too restrictive and taking into account current marketing practices not practicable to achieve required level of quality compared to the current tables in the standards. Therefore, AMS has modified the commentor's proposed language and tolerances in reference to the shipping point decay tolerance. The following language and tolerances are being proposed:

Tolerances: In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count are provided as specified: U.S. Fancy and U.S. No. 1 Shipping Point: 8 percent for fruit which fails to meet the requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for the defects listed: 4 percent for defects causing serious damage, including in the later amount not more than 1 percent for decay. En Route or At Destination: 12 percent for fruit which fails to meet the requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for the defects listed: 8 percent for permanent defects; 6 percent for defects causing serious damage; including therein not more than 4 percent for serious damage by permanent defects and not more than 2 percent decay. U.S. No. 2 Shipping Point: 8 percent for fruit which fails to meet the requirements of the specified grade: Provided, that included in this amount not more than 1 percent for decay. En Route or At Destination: 12 percent for fruit which fails to meet the requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for the defects listed: 8 percent for permanent defects; and not more than 2 percent for decay.

Application of Tolerances: Individual samples shall have not more than double a specified tolerance except that at least two defective specimens may be permitted in any container: *Provided*, That no more than one specimen affected by decay be permitted in any container, and provided further, that the averages for the entire lot are within the tolerances specified for the grades.

AMS is soliciting comments on the proposed revision to the U.S. Standards for Grades of Pineapples. The official grades of pineapples covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (7 CFR 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. AMS is seeking comments regarding how marketing of pineapples will be effected with this revision.

Authority: 7 U.S.C. 1621—1627.

Dated: August 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–15951 Filed 8–14–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, September 6, 2007. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

(1) Welcome/Introductions.

(2) Presentation on Environmental Education.

(3) Group Discussion on *Last Child in the Woods*, a book by Richard Louv.

(4) Review of the draft Recommendation on Strategic Plan for Environmental Education at Land Between The Lakes.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by August 30, 2007, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on September 6, 2007, 9 a.m. to 3 p.m., CDT.

ADDRESSES: The meeting will be held at the Land Between The Lakes Administrative Building, Golden Pond, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison,

Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: July 20, 2007.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. E7–15991 Filed 8–14–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Request for Proposals: Fiscal Year 2007 Funding Opportunity for Research on the Economic Impact of Cooperatives

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Initial Notice of request for proposals.

SUMMARY: Rural Business—Cooperative Service programs are administered through USDA Rural Development. USDA Rural Development announces the availability of approximately $500,000 in competitive cooperative agreement funds for fiscal year (FY) 2007 to conduct research on the national economic impact of all types of cooperatives. USDA Rural Development hereby requests proposals from institutions of higher education interested in applying for a competitively awarded cooperative research agreement. This funding is a follow on to funding awarded in FY 2006, the intent of which was to encourage research on the critical issue of the economic value of cooperatives. Funding for FY 2007 is expected to replicate and expand upon research undertaken with FY 2006 funds.

DATES: Interested parties may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than September 7, 2007, to be eligible for FY 2007 funding. Electronic copies must be received by September 7, 2007, to be eligible for FY 2007 funding. Late applications are not eligible for FY 2007 funding.

ADDRESSES: Applicants may obtain application forms, guides, and materials for the cooperative agreement at *http://www.rurdev.usda.gov/rbs/coops/reic.htm* or by contacting USDA Rural Development at (202) 690–0368, (TDD: (800) 877–8339, Federal Information Relay Service) and ask for the cooperative research agreement application kit.

Submit completed paper applications for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/reic.htm,* which contains application guidance, including an Application Guide and application forms. Or you may contact USDA Rural Development at (202) 690–0368 (TDD: (800) 877–8339 Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.,* OMB must approve all "collections of information" by USDA Rural Development. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A)) Because the RFP will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Overview

Federal Agency: Rural Business—Cooperative Service.

Funding Opportunity Title: Research on the Economic Impact of Cooperatives.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.778

Dates: You may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than September 7, 2007, to be eligible for FY 2007 funding. Late applications are not eligible for FY 2007 funding.

Electronic copies must be received by September 7, 2007, to be eligible for FY 2007 funding. Late applications are not eligible for FY 2007 funding.

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): There is no public reporting burden associated with this notice.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) directing funds "for a cooperative research agreement with a qualified academic institution to conduct research on the national economic impact of all types of cooperatives." The Secretary of Agriculture has delegated the program's administration to USDA Rural Development.

The primary objective of this cooperative research agreement program is to facilitate university research on the national economic impact of cooperatives. The research program will need to develop a web-based methodology to enable cooperatives to enter financial and other impact data on a periodic basis; apply the methodology to collect data updates estimates of economic impact of cooperatives; analyze the impact of cooperatives on local wealth creation and retention, and analyze the total returns to investment in cooperatives.

The cooperative agreement proposal must address how the following deliverables will be provided:

1. An analysis of how and the extent to which cooperatives facilitate the creation and retention of wealth within the local communities they serve. The analysis should include the identification of cooperative models and practices that could enhance cooperative contribution to local wealth creation. An estimate of cooperative wealth creation should be made for the U.S. and for each of the following four categories or classes of cooperatives:

i. Commercial sales or marketing—includes farm supply and marketing, grocery and consumer goods, business-to-business, the emerging ethanol and biofuels related industry, and manufacturing.

ii. Social and public services—includes housing, health care, day care/elder care, transportation, and educational services.

iii. Financial services—includes credit unions, banks, and mutual insurance.

iv. Utilities—includes electric, telephone, water, waste, and other regulated utilities.

2. An analysis of the total returns to investment in cooperatives, including returns to the cooperative businesses at the enterprise level as well as the impact of cooperative returns and services to the cooperatives' members at their enterprise levels. Total returns to investment should be analyzed using the same classification scheme as described in Deliverable #1 above.

3. The development of web-based systems for the collection and assembly of basic impact data on a periodic basis. These systems should facilitate the direct entry of financial and economic impact data by individual cooperatives. This methodology will need to account for cooperative organizational complexity, such as a single organization's several local, regional, and national locations, as well as sector differences.

4. The application of the web-based systems, coupled with other available data, to provide an update of data on the economic impact of cooperatives estimated under the FY 2006 funding. This update should cover the calendar year two years after the year for which estimates were made under the FY 2006 research. As final output of the FY 2006 research will likely not be available before January 2009, USDA Rural Development will arrange for the winner of this competition to obtain updates and preliminary data from the University of Wisconsin, the FY 2006 award recipient, as progress is being made on the FY 2006 research. Data items to be collected/measured must include:

- Number and headquarters location of cooperatives,
- Volume measures appropriate for each sector (revenues, dollar value, and other appropriate size indicators),
- Number of persons impacted by the cooperative (members, patrons, or investors), and;
- Number of full-time equivalent jobs and other economic impact variables.
- North American Industry Classification System (NAICS) code (if multiple apply, use code that corresponds to highest revenue).

Sectors for which summary data should be prepared include:

- Housing,
- Health Care,
- Daycare/Elder Care,
- Financial Services,
- Grocery/Consumer Retail,
- Business-to-Business (Wholesaling, Manufacturing),
- Agricultural Marketing (Including Organic and Conventional),
- Agricultural Supplies and Services,
- Public Services (Including Transportation and Education),
- Renewable Energy, and
- Utilities.

5. The population of a database for individual cooperative and summary data collected. The database is to be delivered to USDA Rural Development. USDA Rural Development will work with the grantee to integrate data from this deliverable into existing database applications.

6. The performance of subcontracting services, oversight, and financial controls for the overall project.

7. The submission of quarterly progress reports and quarterly financial reports to USDA Rural Development; and

8. The preparation and submission of publishable quality written reports for Deliverables 1, 2 and 4 to USDA Rural Development.

USDA Rural Development will competitively award one cooperative agreement to fund the collection and analysis of data to determine the national economic impact of cooperatives. An institution of higher education may subcontract or collaborate with others on the research and data collection. A formal consortium of academic institutions is allowed.

Definitions

The definitions at 7 CFR 3019.2 are incorporated by reference.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2007.

Approximate Total Funding: $500,000.

Approximate Number of Awards: 1.

Approximate Average Award: $500,000.

Floor of Award Range: None.

Ceiling of Award Range: $500,000.

Anticipated Award Date: September 21, 2007.

Budget Period Length: 36 months.

Project Period Length: 36 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be institutions of higher education. Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations funded by a group of colleges or universities. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

B. Cost Sharing or Matching

Matching funds are not required but are highly encouraged. Applicants must verify in their applications that matching funds are available for the time period of the agreement if the matching funds are required to complete the project. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Indirect Cost Eligibility: Public Law 110–5, "Continuing Appropriations Resolution, 2007" continues the provision which states "No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties." Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding.

Activity Eligibility: A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out the desired research; and substantial involvement is anticipated between USDA Rural Development acting for the United States Government and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. Therefore, the project proposed must include a description of USDA Rural Development's substantial participation. USDA Rural Development may subsequently negotiate the nature of its participation before the cooperative agreement is executed.

Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible, and the application will not be considered for funding. However, if an application with 10 percent or less of ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the award will be reduced accordingly.

Cooperative Agreement Period Eligibility: Applications that have a timeframe of more than 36 months will be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after September 30, 2010, will not be considered for funding.

Completeness Eligibility: Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any required elements

(in whole or in part) will not be considered for funding.

IV. Application and Submission Information

A. Address To Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.* If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. You may view the Application Guide at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.*

If you submit your application in paper form, you must submit one signed original of your complete application along with two additional copies.

If you submit your application electronically, you must follow the instructions given at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. Form SF–424, "Application for Federal Assistance." In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds that will be used as matching funds, an answer to the question, "Is applicant delinquent on any Federal debt?", the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Applicants can receive a DUNS number at no cost by accessing *http://www.dnb.com/us/* or calling (866) 705–5711.

2. Form SF–424A, "Budget Information—Non-Construction Programs." In order for this form to be considered complete, the applicant must fill out sections A, B, C, and D. The applicant must include both Federal and any matching funds to be included.

3. Form SF–424B, "Assurances—Non-Construction Programs." In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

4. *Title Page.* The title page must include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

5. *Table of Contents.* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the title page.

6. *Executive Summary.* A summary of the proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

7. *Eligibility Discussion.* A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered.

i. *Applicant Eligibility.* The applicant must first describe how it meets the definition of an institution of higher education.

ii. *Purpose Eligibility.* The applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed project consists of activities needed to determine the national economic impact of all types of cooperatives. Second, the applicant must demonstrate that the combined activities are sufficient to estimate the national economic impact of all types of cooperatives.

8. *Proposal Narrative.* The narrative must include the following information:

i. *Project Title.* The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. The project title does not need to appear on a separate page. It can be included on the title page and/or on the information sheet.

ii. *Information Sheet.* A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. *Goals of the Project.* A clear statement of the ultimate goals of the project must be included. There must be an explanation of how economic benefit will be measured.

iv. *Workplan.* The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what timeframe the activity will take place, and the cost of the activity. Please note that one of the proposal evaluation criteria evaluates the workplan and budget. Applicants should only submit the workplan and budget once, either in this section or as part of the workplan/budget evaluation criterion discussion.

v. *Proposal Evaluation Criteria.* Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form.

9. *Certification of Judgment.* Applicants must certify that the United States has not obtained a judgment against them. No Federal funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. "[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it." A separate signature is not required.

10. *Verification of Matching Funds.* Applicants must provide a budget to support the workplan showing all sources and uses of funds during the project period. Applicants will be required to verify any and all matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant

is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification for funds donated outside the proposed time period of the cooperative agreement will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification for in-kind contributions donated outside the proposed time period of the cooperative agreement will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted: The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the award may not be made.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this cooperative agreement program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this program. The matching funds must be spent or donated during the agreement period. (See 7 CFR parts 3015 and 3019 for funds use eligibility rules.)

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will receive zero points for the Funding Match part of the evaluation criteria.

C. Submission Dates and Times

Application Deadline Date: September 7, 2007.

Explanation of Deadlines: Paper applications must be postmarked by the deadline date (see section IV.F. for the address). Final electronic applications must be received by *http://www.grants.gov* by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified whether or not your application was received on time.

D. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, does not apply to this program.

E. Funding Restrictions

Funding restrictions apply to both Federal funds and matching funds. Funds may only be used for activities related to determining the economic impact of cooperatives.

No funds made available under this solicitation shall be used to:

1. Pay for the preparation of the cooperative agreement application;
2. Pay expenses not directly related to the funded project;
3. Fund political or lobbying activities;
4. Fund any activities prohibited by 7 CFR parts 3015 or 3019;
5. Duplicate current services or replace or substitute support previously provided;
6. Pay costs of the project incurred prior to the date of agreement approval; or
7. Pay any judgment or debt owed to the United States.

F. Other Submission Requirements

You may submit your paper application for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your application electronically at *http://www.grants.gov*. Final applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents in one envelope, if by mail or express delivery service.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria and maximum point allowances. Failure to address any one of the following criteria by the application deadline will result in a determination of incomplete and the application will not be considered for funding. The total points available for the set of criteria are 100.

1. Relevance of the project proposal (30 points). Proposals will be evaluated on how directly they address the stated objective of demonstrating economic impact of all types of cooperatives in the United States. Factors to be weighed by evaluators in scoring a proposal's relevance will include the:

- Definition of clear and objective measures of impact;
- Definition of specific measurement strategies for obtaining impact measures from each major cooperative sector and each category of persons impacted by cooperatives; and
- Description of sound data collection and analysis methodology.

2. Quality of Workplan (30 points). The quality evaluation criterion will be based on whether the proposal outlines a sound plan of work that will meet the objectives in a timely and cost-efficient manner. Factors to be weighed by evaluators in scoring a proposal's workplan will include:

- How well the steps for carrying out the work are defined;
- The logic of the sequence of proposed steps and the likelihood they will achieve their intended result;
- The establishment of clear benchmarks and timetables to measure the progress of the project;
- The detail, accuracy, and reasonableness of the project's proposed budget; and
- The ability to replicate measures from the 2006 funding cycle.

3. Quality of personnel and management plan (20 points). The quality of the management plan and the personnel involved in carrying out the proposed project will evaluate the capabilities of the individuals and institutions to implement the work plan in an effective manner. Factors to be weighed by evaluators in scoring a proposal's personnel and management plan will include the:

- Experience of project leaders and the lead institution in managing complex research projects;
- Demonstration of a clear understanding of business models and general economic development;
- Management controls, progress measurements, and reporting systems within a structured project management plan; and
- Experience and relevant skills of researchers, consultants, and subcontractors assigned to carry out specific roles in the project.

4. Funding match and cooperative community support (20 points). Points will be awarded on the basis of the percentage match provided by the applicant and the level of support for the proposal from the cooperative community as evidenced by contribution of resources to the match and other indications of support.

- Up to 20 points will be awarded for matching funds provided by or arranged

for by the applicant. Two points will be awarded for each 5 percent match, up to a maximum of 20 points for a 50 percent match.

B. Review and Selection Process

Each application will be initially reviewed by Rural Development personnel for eligibility and to determine whether all required elements are complete. A list of required elements follows:

- SF–424.
- SF–424A.
- SF–424B.
- Title Page.
- Table of Contents.
- Executive Summary.
- Applicant Eligibility Discussion.
- Purpose Eligibility Discussion.
- Project Title.
- Information Sheet.
- Goals of the Project.
- Work Plan.
- Proposal Evaluation Criterion 1.
- Proposal Evaluation Criterion 2.
- Proposal Evaluation Criterion 3.
- Proposal Evaluation Criterion 4.
- Certification of Judgment.
- Verification of any Matching Funds.

Any incomplete or ineligible applications will not be further evaluated or considered for funding.

All eligible and complete proposals will be evaluated by a team of at least three reviewers based on criteria 1 through 4 described in paragraph A of this section. Reviewers will represent the Rural Development broad mission area, and will include at least three employees of USDA.

Once the scores for criteria 1 through 4 have been independently completed by the three reviewers, the scores will be used to rank the proposals. If the three reviewers rank the best proposal differently then, with the aid of a facilitator, the three reviewers will develop a consensus ranking. If the three reviewers cannot reach a consensus, two additional reviewers will review the proposals and be added to the rankings. A final ranking will be obtained based on the consensus rankings of the three member review panel, or, if appointed, the average of the five reviewers' rankings. Final award recommendation will be sent to the Under Secretary for Rural Development for final selection concurrence.

After the award selection is made, all applicants will be notified of the status of their applications by mail. The awardee must meet all statutory and regulatory program requirements in order to receive their award. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selection is expected to occur on or about September 21, 2007.

VI. Award Administration Information

A. Award Notices

The successful applicant will receive a notification of tentative selection for funding from USDA Rural Development. The applicant must sign a mutually agreed to cooperative agreement and comply with all applicable statutes, regulations, and this notice before the award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

This award is subject to 7 CFR parts 3015 and 3019. These regulations may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1*.

The following additional documentation requirements apply to the awardee selected for this program:

- Agency Approved Cooperative Agreement.
- Form RD 1940–1, "Request for Obligation of Funds."
- Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."
- Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."
- Form AD–1049, "Certification Regarding a Drug-Free Workplace Requirements (Grants)."
- Form RD 400–1, "Equal Opportunity Agreement."
- Form RD 400–4, "Assurance Agreement."

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/reic.htm*.

Reporting Requirements: You must provide USDA Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Cooperative Agreement. Failure to submit satisfactory reports on time may result in suspension or termination of your award.

1. Form SF–269 or SF–269A. A "Financial Status Report," listing expenditures according to agreed upon budget categories, on a quarterly basis. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends.

2. Quarterly performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the workplan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, questionnaire or interview guides, publications of research findings, summaries of data collected, and any other documentation related to how funds were spent.

3. Final Project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the workplan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks include, but are not limited to, publications of research findings, summaries of data collected, documentation of data and software delivered to USDA Rural Development, and any other documentation related to how funds were spent. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the USDA Rural Development's Cooperative Programs, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone: (202) 690–0368 (TDD: (800) 877–8339 Federal Information Relay Service), e-mail: *cpgrants@wdc.usda.gov*.

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: August 9, 2007.

Leann M. Oliver,

Acting Administrator, Rural Business—Cooperative Service.

[FR Doc. E7–15959 Filed 8–14–07; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Notice of Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Meeting notice.

SUMMARY: The Department of Commerce's International Trade Administration (ITA) would like to raise awareness about the importance of identity management to innovation, economic growth, and international trade. Toward that end, ITA will host a roundtable discussion on identity management and international business competitiveness on Tuesday, September 18, 2007. The roundtable is intended to facilitate a candid discussion of individual views by a representative group of experts on this important issue.

DATES: September 18, 2007.

ADDRESSES: Inquiries about participation in the roundtable should be addressed to the contact below, and received by close of business on Monday, August 20, 2007.

FOR FURTHER INFORMATION CONTACT: Paulette Hernandez, U.S. Department of Commerce, Office of Technology and Electronic Commerce, 1401 Constitution Avenue, NW., Room 4324, Washington, DC 20230; Telephone: 202–482–0399; Fax: 202–482–5834; e-mail: *paulette.hernandez@mail.doc.gov.*

SUPPLEMENTARY INFORMATION: The roundtable discussion on identity management and international business competitiveness will look at: (1) The need for improvements in existing identity management practices; (2) the impact of identity management on business competitiveness and the ability of businesses to use electronic commerce to enhance international trade; (3) industry best practices in identity management and challenges associated with promulgating these best practices; (4) the trade-related implications of identity management; and (5) ways to create an identity management landscape that balances the needs of consumers, industry, and government and enables the growth of e-commerce. ITA will host a group of twenty experts in the field of identity management to hold this discussion. In addition, we intend to include up to thirty additional individuals to participate as part of the audience. Space is limited for both panelists and audience participants. ITA will select panelists and audience participants with a view to ensuring broad representation from industry, government, academia, and civil society. This roundtable will be closed to the press.

Dated: August 10, 2007.

Robin Layton,

Director, Office of Technology and Electronic Commerce.

[FR Doc. E7–16048 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Membership of the Office of the Secretary Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership on the Office of the Secretary Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS PRB is responsible for reviewing performance Ratings, pay adjustments and bonuses of Senior Executive Service (SES) members. The term of the new members of the OS PRB will expire December 31, 2009.

Effective Date: The effective date of service of appointees to the Office of the Secretary Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Denise A. Yaag, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization:

Office of the Secretary 2007–2009 Performance Review Board Membership

Office of the Secretary

Tracey S. Rhodes, Director, Executive Secretariat.

Office of Assistant Secretary for Administration

Fred Fanning, Director for Administrative Services.

Barbara Retzlaff, Director, Office of Budget (Alternate).

Bureau of Industry and Security

Mark M. Foulon, Deputy Under Secretary for Industry and Security.

National Institute of Standards and Technology

W. Todd Grams, Chief Financial Office for NIST.

Office of the General Counsel

Michael A. Levitt, Assistant General Counsel for Legislation and Regulation.

Joan Maginnis, Assistant General Counsel for Finance and Litigation (Alternate).

Dated: July 20, 2007.

Denise A. Yaag,

Director, Office of Executive Resources.

[FR Doc. 07–3990 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership on the Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Departmental Performance Review Board (DPRB). The DPRB provides an objective peer review of the initial performance ratings, performance-based

pay adjustment and bonus recommendations, higher-level review requests and other performance-related actions submitted by appointing authorities for Senior Executive Service (SES) members whom they directly supervise, and makes recommendations based on its review. The term of the new members of the DPRB will expire December 31, 2009.

Effective Date: The effective date of service of appointees to the Departmental Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Denise A. Yaag, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the DPRB are set forth below by organization:

Departmental Performance Review Board Membership 2007–2009

Office of the Secretary

Tracey S. Rhoades, Director, Executive Secretariat.

Office of General Counsel

Michael A. Levitt, Assistant General Counsel for Legislation and Regulation.

Joan Maginnis, Assistant General Counsel for Finance and Litigation.

Chief Financial Officer and Assistant Secretary for Administration

William J. Fleming, Deputy Director for Human Resources Management.

Office of the Chief Information Officer

John W. McManus, Deputy Chief Information Officer.

Bureau of Industry and Security

Gay G. Shrum, Director of Administration.

Bureau of the Census

C. Harvey Monk, Assistant Director for Economic Programs.

Economics and Statistics Administration

James K. White, Associate Under Secretary for Management.

Economics and Development Administration

Matthew Crow, Deputy Assistant Secretary for External Affairs and Communication.

International Trade Administration

Michelle O'Neill, Deputy Under Secretary for International Trade.

Stephen P. Jacobs, Director, Office of Policy Coordination.

Minority Business Development Agency

Edith J. McCloud, Associate Director for Management.

National Oceanic and Atmospheric Administration

Robert J. Byrd, Chief Financial Officer/Chief Administrative Officer, NWS.

Joseph F. Klimavicz, Chief Information Officer and Director of High Performance Computing and Communications.

Elizabeth R. Scheffler, Associate Assistant Administrator for Management and CFO/CAO, NOS.

Maureen Wylie, Chief Financial Officer.

Kathleen A. Kelly, Director, Office of Satellite Operations, NESDIS.

National Technical Information Service

Ellen Herbst, Director, National Technical Information Service.

National Telecommunications and Information Administration

Daniel C. Hurley, Director, Communications and Information Infrastructure Assurance Program.

National Institute of Standards and Technology

James M. Turner, Deputy Director.

Dated: July 18, 2007.

Denise A. Yaag,

Director, Office of Executive Resources.

[FR Doc. 07–3992 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 11, 2007, 9 a.m., Room 4830, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the Public.

3. Opening remarks by Bureau of Industry and Security.

4. Regulations update.

5. Country policy updates.

6. Export Enforcement update.

7. Automated Export System (AES) update.

8. Working group reports.

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 Sections 10(a)(1) and 10(a)(3).

A limited number of sears will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 17, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 Sections (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 Sections 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 6, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–3975 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: August 15, 2007.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, Office of AD/CVD Operations 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2007, the Department of Commerce (the Department) published in the **Federal Register** the notice of initiation of a new shipper review of the antidumping duty order on canned pineapple fruit from Thailand for C&A Products Co., Ltd. (C&A). *See Canned Pineapple Fruit from Thailand: Initiation of New Shipper Antidumping Duty Review*, 72 FR 9305 (March 1, 2007). The period of review is July 1, 2006 through December 31, 2006.

Extension of Time Limit for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) of the Department's regulations normally require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the time period for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department has determined that this review is extraordinarily complicated, as the Department requires additional time to evaluate petitioner's (Maui Pineapple Company Ltd.) cost allegation and to review responses. Based on the further analysis required, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Accordingly, the Department is extending the time limit for the completion of the preliminary results of the new shipper review of C&A to 300 days. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The preliminary results will now be due no later than December 19, 2007. The final results will be due 90 days after the date of issuance of the preliminary results, unless extended.

This notice is issued and published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: August 9, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–16007 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Notice of Correction to Initiation of Antidumping Duty Investigation: Light–Walled Rectangular Pipe and Tube from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 15, 2007.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

CORRECTION:

On July 24, 2007, the Department of Commerce ("the Department") published its initiation of investigations on light–walled rectangular pipe and tube ("LWR") for a number of countries. *See Initiation of Antidumping Duty Investigations: Light–Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China*, 72 FR 40274 (July 24, 2007). Subsequent to the publication of the initiation of investigations, we identified an inadvertent error in the **Federal Register**. The case number associated with the LWR investigation for Mexico is incorrect. The correct case number is A–201–836. This notice is to serve as a correction to the case number. The initiation of the investigation of LWR from Mexico is correct and remains unchanged.

This correction is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: August 8, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–16019 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber from Taiwan: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 15, 2007.

FOR FURTHER INFORMATION CONTACT: Devta Ohri, 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) 482–3853.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce ("Department") published an antidumping duty order on certain polyester staple fiber ("PSF") from Taiwan. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000). On May 1, 2006, the Department published a notice of "Opportunity to Request Administrative Review" of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 25565 (May 1, 2006). On May 31, 2006, Far Eastern Textile Limited ("FET") requested an administrative review. On July 3, 2006, the Department published a notice initiating an administrative review for PSF from Taiwan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006). The period of review

("POR") is May 1, 2005, through April 30, 2006.

On June 6, 2007, the Department published the preliminary results of the 2005–2006 administrative review of the antidumping duty order on certain PSF from Taiwan. *See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 31283 (June 6, 2007). This review covers one manufacturer/exporter of the subject merchandise to the United States, FET. In the preliminary results we stated that we would issue our final results for the antidumping duty administrative review no later than 120 days after the date of publication of the preliminary results (*i.e.*, October 4, 2007).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue the final results in an administrative review within 120 days of the publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days.

The Department has determined that completion of the final results of this review within the original time period is not practicable due to the complex legal and factual issues that have arisen since the issuance of our preliminary results of review. Specifically, the Department requires additional time to review pending allegations made by the domestic interested parties and the rebuttals filed by the respondent. Thus, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional 60 days, until December 3, 2007.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: August 7, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–16015 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is currently conducting a new shipper review ("NSR") of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2006, through September 12, 2006. We preliminarily determine that sales have not been made below normal value ("NV") with respect to Guangxi Jisheng Foods, Inc. ("Jisheng"), which participated fully and is entitled to a separate rate in this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer–specific assessment rates are above *de minimis*.

EFFECTIVE DATE: August 15, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, 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) 482–1394.

SUPPLEMENTARY INFORMATION:

Case History

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999) ("*Order*"). On August 21, 2006, we received a timely new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and section 351.214(c) of the Department's regulations, from an exporter and producer, Jisheng. On September 28, 2006, the Department published a notice in the **Federal Register** initiating a NSR for Jisheng. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 71 FR 56954 (September 28, 2006) ("*Initiation Notice*").

On March 26, 2007, the Department published a notice in the **Federal Register** of the extension of the preliminary results by 120 days to July 19, 2007. *See Certain Preserved Mushrooms from the People's Republic of China: Extension of Preliminary Results for Tenth Antidumping Duty New Shipper Review*, 72 FR 14076 (March 26, 2007).

On June 20, 2007, we placed the entry package we received from CBP for Jisheng's new shipper sale on the record of this review. *See* "Memorandum to the File from Julia Hancock, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Certain Preserved Mushrooms from the People's Republic of China: Entry Packages from U.S. Customs and Border Protection ("CBP")," (June 20, 2007). Additionally, on June 22, 2007, the Department issued a memorandum extending the period of review ("POR"), February 1, 2006, to July 31, 2006, through to September 12, 2006. *See* "Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Julia Hancock, International Trade Analyst, Office 9, Subject: Expansion of the Period of Review in the New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China," (June 22, 2007).

We issued the general antidumping duty questionnaire, along with the standard importer questionnaire for NSRs on September 26, 2006, and received responses in October and November 2006. We issued supplemental questionnaires from March through May 2006 and received responses to those questionnaires in April and May 2006.

Surrogate Country and Values

On December 14, 2006, the Department issued a letter to the interested parties requesting comments on surrogate country selection. No party submitted surrogate country selection comments. On February 5, 2007, Jisheng submitted comments on surrogate values.

On July 19, 2007, the Department selected India as the surrogate country. *See* "Memorandum to the File from Julia Hancock, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, and Jim Doyle, Director, Office 9: Antidumping Duty New Shipper Review of Certain Preserved Mushrooms

from the People's Republic of China: Selection of a Surrogate Country" (July 19, 2007) ("Surrogate Country Memo").

Period of Review

The POR covers February 1, 2006, through September 12, 2006.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[1] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i)(3) of the Act, sales and cost information submitted by respondents, as appropriate. At that verification, we will use standard verification procedures, including on–site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We will prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room B099 of the main Commerce building.

Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Jisheng for this NSR. In evaluating whether or not a single sale in a NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's–length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing, Ltd.).

We preliminarily found that the new shipper sale made by Jisheng was made on a *bona fide* basis. Specifically, we found that: (1) the price and quantity of Jisheng's sale was within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR; (2) Jisheng and its customer did not incur any extraordinary expenses arising from the transaction; (3) Jisheng's sale was made between unaffiliated parties at arm's length; (4) there is no record evidence that indicates that Jisheng's sale was not made based on commercial principles; (5) the sale was resold at a profit; and (6) the timing of Jisheng's sale is not an indicator of a sale made on a non–*bona fide* basis.[2] Based on our investigation into the bona fide nature of this sale, the questionnaire responses submitted by Jisheng, as well as Jisheng's eligibility for a separate rate (*see* Separate Rates Determination section below) and the Department's determination that Jisheng was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Jisheng has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Jisheng's sale of subject merchandise to the United States as an appropriate transaction for this NSR.

Separate Rates Determination

The Department has treated the PRC as a non–market economy ("NME") country in all previous antidumping cases. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. There is no evidence on the record suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production ("FOP") in a surrogate country. It is the Department's policy to assign all exporters of the merchandise subject to review, located in NME countries, a single antidumping duty rate unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as adopted and amplified in the *Final Determination of Sales at*

[2] *See* "Memorandum from Julia Hancock, Senior Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms: Guangxi Jisheng Foods, Inc." (July 19, 2007).

Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586–87 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* government control over their export activities.

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

In the instant review, Jisheng submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Jisheng includes government laws and regulations on corporate ownership and control, business licenses, and narrative information regarding the company's operations and selection of management. *See* Jisheng's Section A Response (October 26, 2006). The evidence provided by Jisheng supports a finding of a *de jure* absence of government control over its export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of *De Facto* Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *Furfuryl Alcohol From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Jisheng submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the shareholders' meeting, and the general manager appoints the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, we have preliminarily found that Jisheng has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, Sri Lanka, Indonesia, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* "Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, Office 9; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China (PRC): Request for a List of Surrogate Countries" (December 1, 2006). Because of India's and Indonesia's relative levels of production, and consistent with worldwide characteristics of certain preserved mushrooms, these countries were selected as significant producers of comparable merchandise. *See* Surrogate Country Memo at 4. The Department selects an appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process (March 1, 2004). In this case, we have found that India is a significant producer of comparable merchandise, is at a similar level of economic development pursuant to section 773(c)(4) of the Act, and has publicly available and reliable data. *See* Surrogate Country Memo.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Jisheng because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the delivered price to the first unaffiliated purchaser in the United States. For this EP sale, we also deducted foreign inland freight, foreign brokerage and handling, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act. For Jisheng, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. *See* "Memorandum to the File from Julia Hancock, Senior Analyst, through Alex Villanueva, Program Manager, Office 9; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Preliminary Results" (July 19, 2007) ("Surrogate Values Memo") for details regarding the surrogate values for movement expenses. Additionally, we made adjustments to the gross unit price for U.S. customs duties, which was paid for in U.S. dollars.

Normal Value

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Jisheng for the POR. To calculate NV, we valued the reported FOP by multiplying the per–unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. We calculated these inland freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in

accordance with the United States Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). For a detailed explanation of all surrogate values used for Jisheng, *see* Surrogate Values Memo.

Except where discussed below, we valued raw material inputs using February 2006–July 2006 weighted–average Indian import values derived from the *World Trade Atlas* online ("*WTA*"). *See* Surrogate Values Memo. The Indian import statistics obtained from the WTA were published by the Indian Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, in accordance with 773A(a) of the Act, they were converted to U.S. dollars using the official exchange rate for India recorded on the date of sale of subject merchandise in this case. *See http://www.ia.ita.doc.gov/exchange/index.html*. Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the publicly available information for inflation or deflation using Indian wholesale price indices as published in the International Monetary Fund's *International Financial Statistics*. *See* Surrogate Values Memo.

In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from South Korea, Thailand, and Indonesia from the surrogate country import data due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.

Surrogate Valuations

The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are: publicly available, product–specific, representative of a broad market average, tax–exclusive and contemporaneous with the POR. *See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2; *Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decisions Memorandum at Comment 14 ("*LTFV FFF Final Determination*"). Below is a discussion of certain surrogate valuations. All other surrogate valuations are described in more detail in the Surrogate Values Memo.

To value the input of mushroom spawn, we used data from the fiscal year ("FY") 2004–2005 financial statement of an Indian mushroom producer, Agro Dutch Industries, Ltd. ("Agro Dutch"). While Jisheng submitted Harmonized Tariff Schedule ("HTS") 0602.90.10 as the HTS classification for mushroom spawn, the HTS is a basket category for mushroom spawn that is not specific to the input, which is mushroom spawn for the species of subject merchandise, *Agaricus bisporus* and *Agaricus bitorquis*. *See Order*, 64 FR at 8309; Jisheng's Second Supplemental Response (May 14, 2007) at Exhibit SSC–5. In contrast, the Department notes that Agro Dutch's mushroom spawn value from the FY 2004–2005 financial statement is specific to the species of subject merchandise. The Department has obtained publicly available information from Agro Dutch's website, http://www.agro–dutch.com/letter.htm, that states that Agro Dutch cultivates and produces button mushrooms or Agaricus bisporous. *See* "Memorandum to the File, from Julia Hancock, Senior Case Analyst, RE: Certain Preserved Mushrooms from the People's Republic of China: Additional Information" (July 19, 2007) at Attachment 1 ("Additional Information Memo"). Accordingly, the Department finds that Agro Dutch's mushroom spawn value from FY 2004–2005 financial statement is specific to the input, mushroom spawn of *Agaricus bisporous*, that is used to produce subject merchandise.

Although the record contains Agro Dutch's FY 2005–2006 financial statement, which is more contemporaneous with the POR, the Department is not using this to value mushroom spawn because Agro Dutch's financial statement does not contain an individual mushroom spawn value. The Department notes that Agro Dutch's FY 2005–2006 financial statement lists a combined value for mushroom spawn and tin plate and thus, the Department cannot distinguish the specific amount for mushroom spawn. *See* Additional Information Memo, at Attachment 2. Because Agro Dutch's mushroom spawn value from the FY 2004–2005 financial statement is not contemporaneous with the POR, the Department adjusted this value for inflation. *See* Surrogate Values Memo, at Exhibit 2.

To value rice straw, we used a straw value from an Indian producer of mushrooms and vegetables, Flex Foods Ltd. ("Flex Foods"), FY 2005–2006 financial statement. Although Jisheng stated that rice straw is comparable to wheat straw data from Agro Dutch's FY 2004–2005 financial statement, the Department finds that there is no record evidence that shows that wheat straw is comparable or similar to rice straw. *See* Jisheng's April 25, 2007, Supplemental Section D Submission, at 8; Jisheng's February 5, 2007, Factor Value Submission, at Exhibit 3. Additionally, while Jisheng submitted that rice straw should be classified under HTS 1213.00, described as "Cereal, Straw, Husks," the Department finds that this HTS is not specific to the input because it contains several items not comparable to straw. However, the Department has obtained a straw value from Flex Foods' FY 2005–2006 financial statement that is specific to the input, rice straw, because the value is for a type of straw used by a producer of comparable merchandise from the selected surrogate country. Additionally, this value is contemporaneous with the POR because Flex Foods' fiscal year covers two months of the POR.

To value the input of cattle manure, we used data from the FY 2004–2005 financial statement of Agro Dutch. The cattle manure value from Agro Dutch's FY 2004–2005 financial statement is specific to the input and from a producer of subject merchandise from the selected surrogate country. Since the value of cattle manure was not contemporaneous with the POR, the Department adjusted Agro Dutch's cattle manure value for inflation. *See* Surrogate Values Memo, at Exhibit 2.

To value the surrogate financial ratios for factory overhead ("OH"), selling, general & administrative ("SG&A") expenses, and profit, the Department

used the 2005–2006 (4/05–3/06)[3] financial statements of Agro Dutch and Flex Foods. The Department notes that, as discussed above, Agro Dutch is a processor of mushrooms and Flex Foods is an Indian producer of mushrooms and vegetable products. Therefore, Agro Dutch's and Flex Foods' financial ratios for OH and SG&A are comparable to Jisheng's financial ratios because Agro Dutch's and Flex Foods' production experience is comparable to Jisheng's production experience. Additionally, the financial statements of these two companies are contemporaneous for two months of the POR. Moreover, an average of the financial statements of Agro Dutch and Flex Foods represents a more broader spectrum of the Indian mushroom industry, instead of the financial statement of a single mushroom producer. *See* Surrogate Values Memo, at Exhibit 8.

To value land rent, the Department used data from the *2001 Punjab State Development Report*, administered by the Planning Commission of the Government of India. *See* Additional Information Memo, at Attachment 3. Since the value of land rent was not contemporaneous with the POR, the Department adjusted the value for inflation *See* Surrogate Values Memo, at Exhibit 2.

To value electricity, the Department used electricity rates for India from the Key World Energy Statistics 2003, published by the International Energy Agency. *See data.iea.org*. Since the electricity rates were not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memo, at Exhibit 4.

To value water, the Department used data from the Maharastra Industrial Development Corporation (www.midcindia.org) to be the best available information since it includes a wide range of industrial water rates. Since the average of the water rates was not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memo, at Exhibit 4.

To value freight expenses for both raw materials and subject merchandise, we used data from www.infreight.com. This source provides daily rates per truck load from six major points of origin to five different destinations in India. Since the average of the freight rates was not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memo, at Exhibit 6.

[3] Both Agro Dutch and Flex Foods have a fiscal year of April to March.

19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor, the Department used the regression–based wage rate for the PRC published on the Import Administration website. *See* http://ia.ita.doc.gov/wages/04wages/04wages–010907.html.

To value brokerage and handling ("B&H"), the Department used the publicly summarized version of the average value for B&H expenses reported in the U.S. sales listings in Agro Dutch Industries Ltd.'s March 2, 2006, submission in the antidumping duty review of Certain Preserved Mushrooms From India.

The Department valued all other FOPs using *WTA* data, which are described in full detail in the Surrogate Values Memo.

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period February 1, 2006, through September 12, 2006:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Exporter/Manufacturer	Weighted–average margin (percent)
Guangxi Jisheng Foods, Inc.	0.00

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this new shipper review, including the results of our analysis of the issues raised by the parties in their comments, within 90 days of publication of these preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess antidumping duties and liquidate on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Jisheng entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Jisheng, the cash–deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Jisheng but not manufactured by Jisheng, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Jisheng but exported by any other party, the cash deposit rate will be the rate applicable to the exporter.

If the cash deposit rate calculated for Jisheng in the final results is zero or *de minimis*, no cash deposit will be required for subject merchandise both produced and exported by Jisheng. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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.

This new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h)(i).

Dated: July 19, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–15672 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the South Atlantic States; Amendment 16

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

ACTION: Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); notice of scoping meetings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DEIS to assess the impacts on the natural and human environment of the management measures proposed in its draft Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP).

DATES: Written comments on the scope of issues to be addressed in the DEIS will be accepted through September 14, 2007, at 5 p.m.

ADDRESSES: Comments should be sent to Jack McGovern, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 727–824–5305; fax: 727–824–5308; e-mail: *John.McGovern@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fisheries Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: 843–571–4966, toll free 1–866–SAFMC–10; fax: 843–769–4520; e-mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the South Atlantic region in the economic exclusive zone is managed under the FMP. Following Council preparation, the FMP was approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in March of 1983.

A stock assessment for gag and an update of a 2003 stock assessment for vermilion snapper were completed through the Southeast Data, Assessment, and Review (SEDAR) process in 2007. The stock assessments were reviewed by the Council's Scientific and Statistical Committee at their June 2007 meeting and were determined to be based on the best available science. The stock assessments have revealed both species are experiencing overfishing conditions and gag is approaching an overfished condition. Model projections show the gag stock becoming overfished in 2007. Furthermore, the vermilion snapper stock assessment update indicates recent management measures implemented in 2006 (1.1. million lb (499,000 kg) quota and increase in recreational size limit to 12 inches (30 cm) total length) are not adequate to end overfishing.

It is anticipated that the regulations designed to reduce fishing mortality developed in Amendment 16 will be in place by January 1, 2009. By reducing fishing mortality beginning in 2009, the Council intends to end overfishing of vermilion snapper and gag and allow biomass of gag to increase to a level produced when fishing at a rate that would produce the optimum yield. Thus, the potential adverse biological, economic, and social impacts associated with further decline of these stocks would be avoided with implementation of these management measures.

To prevent overfishing, the Magnuson-Stevens Act provides national standards that must be satisfied within the FMPs. The national standards require parameters, including maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality rate threshold (MFMT), which are used to avoid overfished and overfishing situations. Currently, static spawning potential ratio proxies are used to define MSY, OY, and MFMT. In Amendment 16, the Council intends to specify the required parameters for gag and vermilion snapper, based on results from recent SEDAR assessments.

This NOI is intended to inform the public of the preparation of a DEIS in support of an amendment to the snapper-grouper FMP. The DEIS will specify the required parameters for gag and vermilion snapper, consider alternatives to establish a shallow-water grouper unit to minimize bycatch of shallow-water grouper species, and consider alternatives to end overfishing of gag and vermilion snapper.

To end overfishing, the Council must reduce fishing mortality. The Council, at its September 2007 meeting, will consider various management measures that will end overfishing. Possible management measures the Council could consider include (but are not limited to): recreational and commercial catch limits; allocations; quotas; seasonal closures (both recreational and commercial); changes to recreational bag limits; and changes to size limits. Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the DEIS and the associated Amendment 16 at the following locations: (1) September 4, 2007, Hilton Wilmington Riverside, 301 North Water Street, Wilmington, NC 28401, phone: 910–763–5900; (2) September 4, 2007, Sombrero Cay Clubs, 19 Sombrero Boulevard, Marathon, FL 33050, phone: 305–743–2250; (3) September 5, 2007, Sheraton Atlantic Beach, 2717 West Fort Macon Road, Atlantic Beach, NC 28512, phone: 252–240–1155; (4) September 6, 2007, Hampton Inn Daytona Speedway, 1715 West International Speedway Boulevard, Daytona Beach, FL 32114, phone: 386–257–4030; (5) September 10, 2007, Holiday Inn Charleston Airport and Convention Center, 5624 International Boulevard, North Charleston, SC 29418, phone: 843–576–0300; and (6) September 17, 2007, Avista Resort, 300 North Ocean Boulevard, North Myrtle Beach, SC 29582, phone: 843–249–2521.

All scoping meetings will start at 6 p.m. The meetings will be physically accessible to people with disabilities. Requests for information packets and for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fisheries Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: 843–571–4966, toll free 1–866–SAFMC–10; fax: 843–769–4520. Requests may also be sent by e-mail to *kim.iverson@safmc.net*.

Following consideration of public comments, the Council plans to prepare the draft Snapper-Grouper Amendment

16/DEIS in November 2007. The Council and its Scientific and Statistical Committee will review the draft Snapper-Grouper Amendment 16/DEIS at the December 2007 Council meeting. If the Council approves the document, public review will take place beginning in January 2008. A comment period on the DEIS is planned, which will include public hearings to receive comments. Availability of the DEIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in local news media.

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

Dated: August 10, 2007.

Emily Menashes,

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

[FR Doc. E7–16010 Filed 8–14–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB57

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Barges Through the Beaufort Sea Between West Dock and Cape Simpson or Point Lonely, Alaska

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a barging operation within the U.S. Beaufort Sea has been issued to FEX L.P. (FEX) for a period of 1 year.

DATES: Effective from August 9, 2007 through August 8, 2008.

ADDRESSES: The authorization and application containing a list of the references used in this document may be obtained by writing to P. Michael Payne, Chief. Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The application is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On April 26, 2007, NMFS received an application from FEX to take several species of marine mammals incidental to the movement of two tugs towing barges in the U.S. Beaufort Sea. Marine barges would be used to either resupply or demobilize from their ongoing drilling activities on the Northwest National Petroleum Reserve-Alaska Oil and Gas Leases. For a resupply operation, consumables, fuel, and essential pad construction equipment would be marine lifted from West Dock (Prudhoe Bay) to the Cape Simpson operational staging area, where it would be stored in preparation of the 2007–2008 winter exploration season. A detailed description of the barging activities is provided in the June 7, 2007, **Federal Register** notice (72 FR 31550) and is not repeated here.

Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including Western Arctic bowhead whales (*Balaena mysticetus*), Eastern North Pacific gray whale (*Eschrichius robustus*), Beaufort Sea and Eastern Chuchi Sea stocks of beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Only the bowhead whale is listed as endangered under the Endangered Species Act (ESA) and designated as "depleted" under the MMPA. The Western Arctic stock of bowhead whales has the largest population size among all 5 stocks of this species (Angliss and Outlaw, 2007). A brief description of the distribution, movement patterns, and current status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports (SARs). Please refer to those documents for more information on these species. The SARs can be downloaded electronically from: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2006.pdf*. The FEX application is also available on-line (see **ADDRESSES**).

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on June 7, 2007 (72 FR 31550). During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (the Commission), the

North Slope Borough (NSB), and a private citizen.

Comment 1: The Commission recommends issuance of the IHA provided that

(1) All reasonable measures be taken to ensure the least practicable impact on the subject species, and

(2) The required mitigation and monitoring activities (i.e., the use of native advisors, the comprehensive training of all marine mammal observers, and on-board monitoring throughout the transit operations) are carried out as described in NMFS' June 7, 2007, **Federal Register** notice (72 FR 32550) and the application.

Response: NMFS agrees with the Commission's recommendation and has incorporated these mitigation and monitoring measures in the IHA.

In its comments, the Commission commends FEX for seeking authorization to take marine mammals incidental to the proposed activities and for consulting with Alaska Native groups whose subsistence use could be affected.

Comment 2: A private citizen is concerned that barges may kill whales and recommends that barges only go out when the sea is calm and the vessels can be safely maneuvered to avoid hitting anything.

Response: NMFS does not believe that these barges moving at a speed of 4—5 knots would cause any marine mammal strikes. In addition, marine mammal observers (MMOs) will be placed on each vessel for marine mammal monitoring during the barging activities. Therefore, as stated in this document, no Level A harassment or mortality will occur as a result of this barging activity in the U.S. Beaufort Sea.

Comment 3: The NSB inquires about the number of barges that would be involved, and the number of trips that the barges would make.

Response: As stated in the June 7, 2007, **Federal Register** notice (72 FR 31550), approximately 2 tugs and 2 barges would be involved in the proposed activity. There will be a total of up to 16 barge trips expected for the 2007 activity.

Comment 4: The NSB states that it is unacceptable for estimates of potential harassment of marine mammals to be based on marine observer results from two previous years of data, especially when one of the two years encountered no marine mammals. The NSB further states that the lack of data for one of those years shows that the data has the potential to be extremely variable. Therefore, NSB recommends that the potential effects from the barging operations should be calculated in the same manner in which effects are calculated for seismic and drilling activities and sound radii should be determined from barges both under load and not under load, as well as from barges with propellers in different conditions. And that the estimated mammal densities should then be applied to these radii to estimate take.

Response: As stated in the previous **Federal Register** notice (72 FR 31550, June 7, 2007) the number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable since there is a lack of abundance estimate data for these species within the transit route. Therefore, the marine mammal sighting data during the 2005 and 2006 barging operations were used to proximate the estimated take, as stated in the June 7, 2007, **Federal Register** notice (72 FR 31550). NMFS considered this to be the best available data to be used in estimation of marine mammal takes. The NSB is mistaken when stating that one of the two years encountered no marine mammals. In fact, as described in the June 7, 2007 **Federal Register** notice (72 FR 31550), marine mammals were sighted during both 2005 and 2006 barging operations. Numbers and behavioral reaction of these marine mammals sighted in the 2005 and 2006 barging operations were provided in detail in the previous **Federal Register** notice (FR 72 31550, June 7, 2007). Given that marine mammal abundance data is limited for the proposed project area, NMFS believes that using the sighting data from the previous barging activities, which occurred in the same area as the proposed action, is the best way to estimate numbers of Level B harassment of marine mammals that could be incidentally taken by barging activities.

Comment 5: The NSB states that the statement made in the previous **Federal Register** notice (FR 72 31550, June 7, 2007) that studies at Northstar found no evidence of development activities affecting the availability of seals for subsistence hunters is misleading, because NMFS acknowledges that the Northstar vicinity is outside the areas used by subsistence hunters. The NSB states that there is little to no information available about the effects that the proposed barging would have on subsistence hunting.

Response: The Northstar example in the previous **Federal Register** notice (FR 72 31550, June 7, 2007) is based on research in the vicinity of Northstar that long-term oil and gas activities did not show any significant impacts on the distribution and abundance of ringed seals (Williams *et al.*, 2001; 2006). NMFS believes that such evidence is a good indication that the proposed barging operations, which would occur in a smaller scale for a much shorter period, would not have an unmitigable effect on subsistence uses of marine mammals. In addition, FEX and the Alaska Eskimo Whaling Commission (AEWC) signed the Conflict Avoidance Agreement (CAA) on June 11, 2007. FEX will continue to work with Alaskan Natives to ensure that the proposed barging operations would not have unmitigable impacts to subsistence use of marine mammal species and stocks.

Comment 6: The NSB requests that FEX conduct sound signature tests (SSTs). The NSB states that last year's test indicated that pushing heavy barge loads produced greater sound levels than unloaded barges. The NSB states that they understand that FEX will not be loading the barges to full capacity, the information gleaned from tests of barges running at even half capacity would be valuable. The NSB further requests that SSTs should measure down to the 120 dB level. The NSB states that using a model to estimate the 120 dB level is not appropriate because last year the models underestimated distances by 2 - 3 times.

Response: FEX states that they met with representative of the NSB on June 21, 2007, and discussed the SST. FEX explained that while the report from JASCO Research noted that the barges were "partially loaded," in fact they were fully loaded to meet the draft restrictions of getting into Cape Simpson. FEX states that the one time a vessel was listed as fully loaded, it was actually fully loaded by volume, not by weight. FEX further states that the reason for the noise increase was due to a damaged propellor.FEX states that it has discussed the SST with the NSB regarding the SST, and that some good data on vessel noise were collected in 2006 for the same barges that would be used for the proposed operations. NMFS agrees with FEX that since extensive acoustic measures were obtained from these barges a year earlier, there is no need to conduct additional measurement.

Potential Effects of Tug/Barge Operations and Associated Activities on Marine Mammals

Level B harassment of marine mammals may result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between vessels and whales will be essentially zero due

to the slow tow speed (approximately 5 knots) and visual monitoring by on-board MMOs.

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals. spotted seals, and bearded seals.

Bowhead whales are not expected to be encountered in more than very small numbers during the planned period of time for the tug/barge movement because the most of them will be on their summer feeding grounds in the eastern Beaufort Sea and Amundsen Gulf of the Canadian waters (Fraker and Bockstoce, 1980; Shelden and Rugh, 1995).

A few transitory whales may be encountered during the transits. Most summering gray whales congregate in the northern Bering Sea, particularly off St. Lawrence Island and in the Chirikov Basin (Moore *et al.*, 2000), and in the southern Chukchi Sea. In August 2001, Williams and Coltrane (2002) reported a single sighting of a gray whale near the Northstar production facility, indicating that small numbers do travel through the waters offshore from the Prudhoe Bay region during some summers, however, given their rare occurrence in the eastern portion of the Beaufort Sea in summer, no more than a few are expected during the summer and early fall.

Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transits. Ringed seals are expected to be present all along the tug/barge transit routes. There is the possibility that bearded and spotted seals would also be taken by Level B harassment during transit. Spotted seals may be present in the West Dock/Prudhoe Bay area, but it is likely that they may be closer to shore.

Numbers of Marine Mammals Expected To Be Taken

The number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable since there is a lack of abundance estimate data for these species within the transit route. However, based on prior barging activities in 2005 and 2006, it is expected that a small number of marine mammals could be exposed to barging noise levels at 120 dB re 1 microPa and above.

Based on the fact that bowhead whales, gray whales, and beluga whales were all observed during the 2005 operations (although no cetaceans were observed during 2006), harassment of cetaceans is possible by the 2007 planned barging operations. Gray whales in 2005 were observed near Pt. Barrow, outside the West Dock/Cape Simpson operating lane, during periods the vessels traveled to Elson Lagoon to avoid foul weather. No gray whales have been observed between West Dock and Cape Simpson, and are not expected to be encountered unless weather conditions dictate the safety need of the vessels anchoring at Elson Lagoon.

Beluga distribution is difficult to predict. Sightings are always possible, especially if the pack ice is nearby.

The barging travel route between West Dock and Cape Simpson approximately follows the 7.5–m (25–ft) isobath. This nearshore depth zone represents the southern edge of the bowhead fall migration route. Aerial surveys conducted by Treacy (2002) between 1982 and 2001 found bowheads migrating in water this shallow in only 5 of the 20 years of survey (25 percent). Thus, given the shallow water barging travel route, and the inter-annual differences in whale use of these waters, the number of whale sightings expected to be encountered might vary from 0 (as in 2006) to 9 (in 2005).

Some of the whales observed in 2005 may have briefly occurred within the 120–dB sonification zone (1 km or 0.62 mi radius), therefore, Level B harassment of bowhead whales is possible. However, given the shallow water travel route, the low whale use of this shallow water area, the presence of marine mammal observers onboard the barges to detect whales early and help direct the barge away from the whales, the relatively short distances to the 120–dB isopleths, especially for the half the time the vessel are traveling unloaded, and based on cetacean encountering rates during the 2005 barding activity, NMFS expects that at maximum 9 bowhead whales, 8 beluga whales, and 4 gray whales could be exposed to sound levels greater than 120 dB during the 2007 barging season. These take numbers would represent approximately 0.09 percent of the Western Arctic bowhead whales (population estimated at 10,545), 0.02 percent of the Beaufort Sea beluga whales (population estimated at 39,258) or 0.21 percent of the Eastern Chukchi Sea beluga (population estimated at 3,710), and 0.02 percent of the Eastern North Pacific gray whales (population estimated at 18,178).

During the 2005 and 2006 barging season, 2,419 seals representing three species (ringed, spotted, and bearded seals) were recorded. Approximately 90 percent of these animals were ringed seals.

In 2006, reactions were recorded for 1,020 of the ringed seal sightings. Of these, 48 percent (490) had no reaction, 37 percent (381) reacted mildly, and 15 percent (148) more strongly and showed startling behavior. The percentage of ringed seals that reacted strongly is very similar to the 17 percent recorded in 2005.

Of the 23 spotted seal sightings for which reactions were recorded in the 2006 barging season, 30 percent (9) showed behavioral changes.

Eighteen (24 percent) of the 75 unidentified phocids and 2 (7 percent) of 28 bearded seals sighted showed behavioral reactions as a result of the 2006 barging activity.

Based on the 2005 and 2006 barging activities, NMFS estimates that approximately 530 ringed seals, 10 spotted seals, 2 bearded seals, and 9 unidentified phocids could be taken by Level B harassment as a result of the 2007 barging activity. These numbers represent less than 0.02, 0.02, and 0.0008 percent of ringed, spotted, and bearded seals in the proposed barging route, respectively. The population estimates for these animals are approximately 249,000, 59,214, and 250,000–300,000 for ringed, spotted, and bearded seals, respectively.

Effects on Subsistence Needs

Barrow residents are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Barrow hunters may hunt year round; however, in more recent years most of the harvest has been in the summer during open water instead of the more difficult hunting of seals at holes and lairs (Mclaren, 1958; Nelson, 1969). The Barrow fall bowhead whaling grounds, in some years, takes in the Cape Simpson and Point Lonely areas.

The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17

of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997).

Due to the transient and temporary nature of the barge operations, impacts on these seals are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because: (1) transient operations would temporarily displace relatively few seals; (2) displaced seals would likely move only a short distance and remain in the area for potential harvest by native hunters; (3) studies at the Northstar development found no evidence of the development activities affecting the availability of seals for subsistence hunters; however, the Northstar vicinity is outside the areas used by subsistence hunters (Williams *et al.*, 2001; 2006); and (4) the area where barge operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to further minimize any effect of barge operations on the availability of seals for subsistence, the tug boat owners/operators will follow U.S. Coast Guard rules and regulations near coastal water, therefore avoiding hunters and the locations of any seals being hunted in the activity area, whenever possible.

The barging, as scheduled, would be completed before the westward migration of bowhead whales in the fall and the associated subsistence activities by the local whalers. Finally, the travel route occurs west of Cross Island (Nuiqsut fall bowhead camp) and east of Barrow, therefore it does not pass by any of the whaling base camps.

In addition, FEX and the AEWC signed the CAA on June 11, 2007. FEX will continue to maintain interactive dialogue to resolve conflicts and to notify communities of any changes in the operations.

Mitigation, Monitoring, and Reporting

As in 2005 and 2006, FEX will conduct a marine mammal monitoring program as part of the 2007 program. This program will place an MMO onboard each vessel to conduct continuous monitoring for marine mammals. The MMOs will be trained by a qualified marine mammal biologist and be approved by NMFS.

The observers will scan the area around tug/barge with 7 x 50 reticule binoculars during the daylight hours, and document the presence, distribution, behavior, and reaction of marine mammals sighted from project-associated vessels. The primary purpose of the marine mammal monitoring program is to monitor the reaction of marine mammals to the presence of the vessels, and to detect early any whales occurring in the barge path thereby allowing the vessel captain time to avoid a close approach to the animals.

Reports for each roundtrip will be prepared and provided to NMFS and AEWC at the end of each trip. If a coordination center is opened by other North Slope operators and operated during FEX's monitoring operations, marine mammals trip sighting reports will be provided to that location.

A report documenting and analyzing any harassment or other "takes" of marine mammals that occur as part of this monitoring program will be provided to NMFS within 90 days of completion of the monitoring activities. Copies will be provided to other qualified interested parties. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including numbers of each species observed, location (distance) of animals relative to the barges, direction of movement of all individuals, and description of any observed changes or modifications in behavior.

ESA Consultation

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes barging transportation activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of incidental takes under the MMPA. A biological opinion on these activities was issued in 2001, and updated in 2006. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this IHA on bowhead whales has been compared with the analysis contained in the 2006 biological opinion. NMFS has determined that the effects of the current activity is not likely to jeopardize the existence of ESA-listed marine mammal species, and are consistent with the findings of that biological opinion. Accordingly, NMFS has issued an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act (NEPA)

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (Final EIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and Final EISs, and subsequently, on May 18, 2000, adopted the Corps' Final EIS as its own document. That Final EIS described impacts to marine mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. No additional NEPA analysis is required for the following reasons: (1) The barging activity discussed in the Final EIS is not substantially different from the proposed action by FEX; and (2) no significant new scientific information had been identified that alters the affected environment.

Conclusions

NMFS has determined that the impact of conducting a short-term barging operation between West Dock, Prudhoe Bay and Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a temporary modification in behavior by a small number of certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues from the barging operation, this behavioral change is expected to have a negligible impact on the annual rate of survival and recruitment of marine mammal stocks. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the relocation route.

The principal measures undertaken to ensure that the barging operation will not have an unmitigable adverse impact on subsistence activities is a CAA between FEX and the AEWC, a Plan of Cooperation, and an operation schedule that will not permit barging operations during the traditional bowhead whaling season.

Determinations

NMFS has issued an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock, Prudhoe Bay Alaska, through the U.S. Beaufort Sea to Cape Simpson or Point Lonely. This IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that this activity would result in the harassment of small numbers of bowhead whales, gray

whales, beluga whales, ringed seals, bearded seals and spotted seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence.

Dated: August 9, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107H]

Incidental Takes of Marine Mammals During Specified Activities; Seismic Testing and Calibration in the Northern Gulf of Mexico

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Lamont-Doherty Earth Observatory (L-DEO) to take small numbers of marine mammals, by Level B Harassment only, incidental to conducting an acoustic calibration and seismic testing program in the northern Gulf of Mexico.

DATES: Effective from July 31, 2007 through July 30, 2008.

ADDRESSES: A copy of the IHA, the application, and the associated Environmental Assessment (EA) and Supplemental EA are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

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.

Authorization 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 that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 2, 2006, NMFS received an application from L-DEO for the taking, by Level B harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), an acoustic calibration and seismic testing program in the northern Gulf of Mexico in Fall, 2006. This project will be conducted with L-DEO's new seismic vessel, the *R/V Marcus G Langseth* (*Langseth*), which will deploy different configurations of airguns and a different bottom-mapping sonar than used previously by L-DEO. L-DEO requests that it be issued an IHA allowing Level B Harassment takes of marine mammals incidental to the planned seismic surveys in the Gulf of Mexico. A detailed description of the purpose of the calibration and testing program was outlined in the NMFS notice of the proposed IHA (71 FR 58790, October 5, 2006).

Description of the Specified Activity

The *Langseth* is expected to depart Mobile, AL in July, 2007 (at the earliest) and will transit to the survey area in the northern Gulf of Mexico. The survey will encompass an area between 24°N. and 31°N. and between 83°W. and 96°W., which is within the Exclusive Economic Zone (EEZ) of the U.S.A. The study will consist of three phases: (1) an initial testing/shakedown phase, (2) measurements of the sounds produced by various airgun arrays to be used by the *Langseth* (calibration), and (3) a three-dimensional (3D) seismic testing phase. The entire survey, calibration and testing included, will take approximately 25 days and include approximately 1420 km (174 hours) of airgun operation. Measurements will be made during seismic operations in three categories of water depth: shallow (<100 m or <328 ft), intermediate/slope (100–1000 m or 328–3281 ft), and deep (>1000 m or >3281 ft). The vessel will transit to Galveston after the study is completed. The exact dates of the activities will depend on logistics and weather conditions.

The full airgun array on the *Langseth* consists of 36 airguns, with a total discharge volume of 6600 in^3. The array is made up of four identical linear arrays or strings, with 10 airguns on each string. For each operating string, nine airguns will be fired simultaneously, while the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The calibration phase will use the full 36-airgun array and subsets thereof. The subsets will consist of either 1 string (9

airguns, 1650 in^3) or 2 strings (18 airguns, 3300 in^3). In addition, sounds from a single 45 in^3 GI gun and 2 GI guns (210 in^3) will be measured. During the seismic testing phase, the 2-string array will be used at most times, although the full 36-airgun array may also be used. The ocean floor will be mapped with the 12-kHz Simrad EM120 MBB sonar. This sonar will be operated from the *Langseth* simultaneous with the airgun array during the seismic testing program, but will likely be operated on its own during the acoustic calibration study.

A more detailed description of the authorized action, including vessel specifications and acoustic source specifications, was included in the notice of the proposed IHA (71 FR 58790, October 5, 2006). Table 1 includes a summary of the use of the airgun configurations by phase and depth.

	1 GI Gun	2 GI Guns	1 Single Airgun	9-Airgun Array (1 Strings)	18-Airgun Array (2 Strings)	36-Airgun Array (4 Strings)
Airgun Specifications						
Energy Source	One 45 in^3 GI Airgun	Two 105 in^3 GI Airguns	One 2000 psi Bolt Airgun	Nine 2000 psi Bolt Airguns of 40–360 in^3	Eighteen 2000 psi Bolt Airguns of 40–360 in^3	Thirty-six 2000 psi Bolt Airguns of 40–360 in^3
Air Discharge Volume (in^3)	45 in^3	210 in^3	40 in^3	1650 in^3	3300 in^3	6600 in^3
Towing Depth of Source	2.5 m	3 m	6 m	6 m	6 m	6 m or 12 m
Source Output (dB re 1 miPa m) 0-pk (pk-pk)*	225.3 (230.7)	237 (243)		246 (253)	252 (259)	259 (265)
Proposed Approximate Airgun Use						
Calibration Phase						
Shallow Site (30-60 m)	10 km	10 km		34 km	34 km	34 km
Intermediate/Slope Site (475 m)				34 km	34 km	34 km
Deep Site (1500)	10 km	10 km		45 km	45 km	45 km
Testing Phase						
Shallow (<100 m)			89 km	24 km	175 km	58 km
Intermediate/Slope (100–1000 m)			89 km	24 km	175 km	58 km
Deep (<1000 m)			89 km	24 km	175 km	58 km

Table 1. L-DEO airgun configurations and proposed approximate use for each configuration by depth and phase.
* The root mean square values (typically discussed in biological literature) for these sources will generally be about 10-15 dB lower than those reflected here.

Safety Radii

L-DEO has estimated the safety radii around their operations using a model, but also by adjusting the model results based on empirical data gathered in the Gulf of Mexico in 2003. Additional information regarding safety radii in general, how the safety radii were calculated, and how the empirical measurements were used to correct the modeled numbers may be found in NMFS proposed IHA (71 FR 58790, October 5, 2006) and Section I and Appendix A of L-DEO's application. Using the modeled distances and various correction factors, Table 2 shows the distances at which three rms sound levels (190 dB, 180 dB, and 160 dB) are expected to be received from the various airgun configurations in shallow, intermediate, and deep water depths.

Source and Volume	Tow Depth (m)	Water Depth	Predicted RMS Radii (m)		
			190 DB	180 dB	160 dB
Single Gi gun 45 in^3	3	Deep	9	25	236
		Intermediate/Slope	13.5	38	354
		Shallow	113	185	645
2 Gi guns 210 in^3	3	Deep	20	69	670
		Intermediate/Slope	30	104	1005
		Shallow	294	511	1970
Single Bolt 40 in^3	6	Deep	12	36	360
		Intermediate/Slope	18	54	540
		Shallow	150	267	983
1 string 9 airguns 1650 in^3	6	Deep	200	650	6200
		Intermediate/Slope	300	975	7880
		Shallow	1450	2360	8590
2 string 18 airguns 3300 in^3	6	Deep	250	820	6700
		Intermediate/Slope	375	1230	7370
		Shallow	1820	3190	8930
4 string 36 airguns 6600 in^3	6	Deep	410	1320	8000
		Intermediate/Slope	615	1980	8800
		Shallow	2980	5130	10670
4 string 36 airguns 6600 in^3	12	Deep	620	1980	12000
		Intermediate/Slope	930	2970	13200
		Shallow	4500	7700	16000

Table 2. Modeled distances to which sound levels 190, 180, and 160 dB re 1 μPa (rms) might be received in shallow (<100 m), intermediate/slope (100–1000 m), and deep (>1000 m) water from the various sources planned for use during the Gulf of Mexico study, fall 2007.

Comments and Responses

A notice of receipt of the L-DEO application and proposed IHA was published in the **Federal Register** on October 5, 2006 (71 FR 58790). During the comment period, NMFS received comments from the Marine Mammal Commission (MMC) and the Center for Regulatory Effectiveness (CRE). Following are the comments from the MMC and CRE and NMFS' responses:

Comment 1: The MMC recommends that observations be made during all ramp-up procedures to gather data regarding the effectiveness of ramp-up as a mitigation measure.

Response: The IHA requires that MMOs on the *Langseth* make observations for the 30 minutes prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace;

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), sea state, visibility, and sun glare.

These requirements should provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up.

Comment 2: The MMC recommends that the monitoring period prior to the initiation of seismic activities be extended to one hour.

Response: As the MMC points out, several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes, however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the start-up of airguns: (1) because the *Langseth* is required to ramp-up, the time of monitoring prior to start-up of any but the smallest array is effectively longer than 30 minutes (Ramp up will begin with the smallest gun in the array and airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5–min period over a total duration of 20–30 min), (2) in many cases MMOs are making observations during times when sonar is not being operated and will actually be observing prior to the 30–minute observation period anyway, (3), the majority of the species that may be exposed do not stay underwater more than 30 minutes, and (4) all else being equal and if a deep diving individual happened to be in the area in the short time immediately prior to the pre-start-up monitoring, if an animal's maximum underwater time is 45 minutes, there is only a 1 in 3 chance that his last random surfacing would be prior to the beginning of the required 30–minute monitoring period.

Comment 3: The MMC recommends that the Service provide additional

justification for its proposed determination that marine mammal detection ability by trained observers is close to 100 percent during daytime (in good weather) and remains high at night.

Response: The *Langseth* is utilizing a team of trained MMOs to both visually monitor from the high observation tower of the *Langseth* and to conduct passive acoustic monitoring.

When stationed on the observation platform of the *Langseth*, the eye level will be approximately 17.8 m (58.4 ft) above sea level, so the visible distance (in good weather) to the horizon is 8.9 nm (16.5 km) (the largest safety radii is 7.7 km (4.2 nm)). Big eyes are most effective at scanning the horizon (for blows), while 7 X 50 reticle binoculars are more effective closer in (MMOs also use a naked eye scan). Additionally, MMOs will have a good view in all directions around the entire vessel.

In some cases, particularly in shallow water and while deploying streamers, chase boats will be deployed. The primary mission of the chase boat is to warn boats that the seismic vessel is approaching and thus the boat will be in front of the seismic vessel (generally about 2 nm). The plan is to have one MMO on the chase boat, who will advise the *Langseth* of the presence of marine mammals in the operating area when forward of the vessel and check for injured animals when aft of the vessel.

Theoretical detection distance of this PAM system is 10s of kilometers. One LGL biologist reported - "Past experience in the GOM would indicate good detection rates out to several kilometers. It is not unreasonable to state that the PAM will detect most marine mammal calls within the 3 km safety radius, particularly clicks from sperm whales." The PAM is operated both during the day and at night.

Though it depends on the lights on the ship, the sea state, and thermal factors, MMOs estimated that visual detection is effective out to between 150 and 250 m using NVDs and about 30 m with the naked eye. However, the PAM operates equally as effectively at night as during the day, especially for sperm whales and dolphins (dolphins are the only species likely to be detected in the "shallow" depths, where the safety zones are the largest).

Comment 4: The MMC recommends that NMFS take steps to ensure that the planned monitoring program will be sufficient to detect, with reasonable certainty, all marine mammals within or entering identified safety zones.

Response: Based on the information provided in the previous comment (above) and the following information, NMFS believes that the planned monitoring program will be sufficient to detect (using visual detection and PAM), with reasonable certainty, all marine mammals within or entering identified safety zones.

As mentioned above, the platform of the *Langseth* is high enough that, in good weather, MMOs can see out to 8.9 nm (16.5 km). The PAM has reliable detection rates out to 3 km and more limited ability out to 10s of km. The largest 180–dB safety radii (3.2, 5.1, and 7.7 km), which is the radii within which the *Langseth* is required to shut down if a marine mammal enters, are found when the 9–gun, 18–gun, and 36–gun arrays are operating in shallow water. The species most likely to be encountered in the shallow water of the GOM, by far, are bottlenose and Atlantic spotted dolphins, which have relatively larger group sizes (6–10 animals for Atlantic spotted and 1–90 animals for bottlenose), are not cryptic at the surface, and have relatively short dive times (< 2 minutes for Atlantic spotted and 5–12 minutes for bottlenose), all which generally make them easier to visually detect. Additionally, the vocalizations of these species are easily detected by the PAM. Additionally, as mentioned above, MMOs on chase boats will sometimes be used in addition to visual monitoring from the seismic vessels and PAM. During the Maurice Ewing cruise in the GOM in 2003, MMOs detected marine mammals at a distance of approximately 10 km from the vessel and identified them to species at approximately 5 km from the vessel, though the bridge of that vessel was only 11 m above the water (vs. the *Langseth*, which is 17 m above). All of the 180–dB safety radii for other depths are less than 3 km (all less than 2 km, except the 36–gun array at intermediate depth, which is 2.97 km).

The likelihood of visual detection at night is significantly lower than during the day, though the PAM remains just as effective at night as during the day. However, the *Langseth* will not be starting up the airguns unless the safety range is visible for the entire 30 minutes prior (i.e., not an night), and therefore in all cases at night, the airguns will already be operating, which NMFS believes will cause many cetaceans to avoid the vessel, which therefore will reduce the number likely to come within the safety radii. Additionally, because of normal operating procedures, which entail beginning seismic operations as soon after dawn as possible, at the most 33% of the actual airgun operation (and much less, most likely) will occur at nighttime. With the exception of operation of airguns in shallow water (which between the 9-, 18-, and 36–gun array totals about 18 hours), all of the other safety radii are smaller than 3 km and fall easily within the reliable detection capabilities of the PAM.

Comment 5: The CRE believes that NMFS should grant the Lamont-Doherty Earth Observatory an IHA for L-DEO's proposed seismic experiments in the GOM. However, the CRE recommended that NMFS revise the IHA to state:

(1) There is no evidence that Gulf seismic operations complying with the traditional 500 meter safety radii have injured marine mammals or any other marine life.

(2) The much larger safety radii in the proposed IHA are based on flawed models and unreliable data.

(3) Visual observation and PAM cannot accurately and reliably monitor for marine mammals in safety radii significantly larger than the traditional 500 meters.

Response:

(1) Neither the proposed IHA nor this **Federal Register** notice state that Gulf seismic operations, utilizing any size safety zone, have injured marine mammals. The proposed IHA states that there is "no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal" and that "Airgun pulses are less energetic and have slower rise times [than explosives], and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays".

(2) As CRE points out in their letter, L-DEO acknowledges in their application the shortcomings of the 2003 data collection using airguns in the GOM, however, this is the best available data for seismic sound propagation in the GOM and L-DEO further explains (see proposed IHA) how they use conservative correction factors in the development of appropriate safety radii (based on the 180–dB criteria prescribed by NMFS). The purpose of the current L-DEO seismic calibration is to improve these data for use in future operations and MMPA authorizations.

(3) NMFS believes that between visual monitoring and PAM the MMOs can accurately and reliably detect marine mammals within safety radii significantly larger than 500 m (see NMFS' responses to comments 3 and 4).

Description of Marine Mammals in the Activity Area

In the Gulf of Mexico, 28 cetacean species and one species of manatee are known to occur (Jefferson and Schiro, 1997; Wursig *et al.*, 2000). In the U.S.,

manatees are managed by the U.S. Fish & Wildlife Service (USFWS), are unlikely to be encountered in or near the open waters of the Gulf of Mexico where seismic operations will occur, and are, therefore, not addressed further in this document. Most of these species of cetaceans occur in oceanic waters (>200 m or 656 ft deep) of the Gulf, whereas the continental shelf waters (<200 m) are primarily inhabited by bottlenose dolphins and Atlantic spotted dolphins (Mullin and Fulling 2004).

Seven species that may occur in the Gulf of Mexico are listed as endangered under provisions of the U.S. Endangered Species Act (ESA), including the sperm, North Atlantic right, humpback, sei, fin, and blue whale, as well as the West Indian manatee. However, of those species, only sperm whales are likely to be encountered. In addition to the 28 species known to occur in the Gulf of Mexico, another three species of cetaceans could potentially occur there: the long-finned pilot whale, the long-beaked common dolphin, and the short-beaked common dolphin (Table 3).

Though any pinnipeds sighted in the study area would be extralimital, hooded seals have been reported in Florida and L-DEO has requested authorization for the take of 2 animals.

During the 2003 acoustical calibration study in the Gulf of Mexico from 28 May to 2 June, a total of seven visual sightings of marine mammals were documented from the *Maurice Ewing*; these included a total of approximately 38–40 individuals (LGL Ltd. 2003). In addition, three sea turtles were sighted. These totals include times when airguns were not operating as well as times

Species	Habitat	Occurrence in GOM	Abundance in GOM and/or North Atlantic	BEST		MAXIMUM	
				Estimated Exposures	Approx. % of Population	Ext. Exposures Auth IHA**	Approx.C% of Population
Odontocetes							
Sperm whale	Usually pelagic and deep seas	Common	1349 / 13190 (add)	22	0.2	22	0.2
Pygmy sperm whale	Deeper waters off the shelf	Common	742 / 695 (add)	56	3.9	59	4.1
Dwarf sperm whale	Deeper waters off the shelf	Common	742 / 695 (add)	56	3.9	59	4.1
Cuvier's beaked whale	Pelagic	Rare	159 / 3196 (add)	10	0.3	21	0.7
Sowerby's beaked whale	Pelagic	Extralimital	106 / 541 (add)	5	0.8	8	1.2
Gervais' beaked whale	Pelagic	Uncommon	106 / 541 (add)	5	0.8	8	1.2
Blainville's beaked whale	Pelagic	Rare	106 / 541 (add)	5	0.8	8	1.2
Rough-toothed dolphin	Mostly pelagic	Common	2223 / 274 (add)	58	2.3	92	3.7
Bottlenose dolphin	Cont. shelf, coastal and offshore	Common	25,320 / 2239 / 29774 (add)	773	1.3	1713	5.0
Pantropical spotted dolphin	Mainly pelagic	Common	91,321 / 13117 (add)	1282	1.2	1587	1.5
Atlantic spotted dolphin	Mainly coastal waters	Common	30,947 / 52279 (add)	876	1.1	1755	0.2
Spinner dolphin	Pelagic in Gulf of Mexico	Common	11,971	168	1.4	921	7.7
Clymene dolphin	Pelagic	Common	17,355 / 6086 (add)	244	1.0	311	1.3
Striped dolphin	Off the continental shelf	Common	6505 / 61546 (add)	91	0.1	134	0.2
Short-beaked common dolphin	Continental shelf and pelagic waters	Possible	30,768	0	0.0	0 (5)**	<0.1
Long-beaked common dolphin	Coastal	Possible	N.A.	0	0.0	0 (5)**	0.0
Fraser's dolphin	Water >1000m	Common	726	10	1.4	60	8.3
Risso's dolphin	Waters 400-1000m	Common	2169 / 29110 (add)	54	0.2	81	0.3
Melon-headed whale	Oceanic	Common	3451	49	1.4	142	4.1

Species	Habitat	Occurrence in GOM	Abundance in GOM and/or North Atlantic	BEST		MAXIMUM	
				Estimated Exposures	Approx. % of Population	Ext. Exposures Auth IHA**	Approx.C% of Population
Pygmy killer whale	Oceanic	Uncommon	408	10	2.6	21	5.1
False killer whale	Pelagic	Uncommon	1038	14	1.4	28	2.7
Killer whale	Widely distributed	Uncommon	133 / 6600 (add)	3	<0.1	5	0.1
Short-finned pilot whale	Mostly pelagic	Common	2388 / 780000 / 14524	34	<0.1	98	<0.1
Long-finned pilot whale	Mostly pelagic	Possible	N.A.	0		0 (5)**	
Mysticetes							
North Atlantic right whale*	Coastal and shelf waters	Extralimital	291	0		0	
Humpback whale*	Mainly near-shore waters / banks	Rare	11,570 / 10400	0		0	
Minke whale	Coastal waters	Rare	149,000	0		0	
Bryde's whale	Pelagic and coastal	Uncommon	40 / 90000	1	2.5	2	5.0
Sei whale*	Primarily offshore, pelagic	Rare	12-13,000	0		0	
Fin whale*	Cont. slope, mostly pelagic	Rare	2814 / 47300	0		0	
Blue whale*	Coastal, shelf, and oceanic waters	Extralimital	308	0		0	
Pinnipeds							
Hood seal	Coastal	Vagrant	400,000[2]	0		0 (2)**	<0.1
Total				3770		7096	

Table 3. Abundance, preferred hatitat, and commonness of the marine mammals species found in the survey area. The far right columns indicate the estimated number of each species that will be exposed to 160 dB based on best and maximum density estimates. NMFS believes that, when mitigation measures are taken into consideration, the activity is likely to result in take of numbers of animals less than those indicated by the best column, however, NMFS has authorized the number in this column.

* Federally listed endangered

** Parenthetical number indicates take authorization, though exposure estimate is 0

when airguns were firing. Visual monitoring effort consisted of 60.9 hours of observations (all in daylight) along 891.5 km of vessel trackline on seven days, and passive acoustic monitoring (PAM) occurred for approximately 32 hours. Most of the monitoring effort (visual as well as acoustic) occurred when airguns were not operating, since airgun operations were limited during the 2003 study. No marine mammals were detected during acoustic monitoring. Marine mammal and sea turtle sightings and locations during the 2003 calibration study are summarized in Appendix C of L-DEOs application.

Additional information regarding the status and distribution of the marine mammals in the area and how the densities were calculated was included in the notice of the proposed IHA (71 FR 58790) and may be found in L-DEO's application.

Potential Effects of the Activity on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment (Richardson *et al.*, 1995), or other non-auditory physiological effects such as stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. To avoid injury, NMFS has determined that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The predicted 180- and 190–dB distances for the GI guns operated by SIO are summarized in Table 2. Given the required mitigation and monitoring measures, it is unlikely that there would be any cases of temporary or, especially, permanent hearing impairment or other serious non-auditory physiological effects.

The notice of the proposed IHA (71 FR 58790, October 5, 2006) included a discussion of the effects of sounds from airguns on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, behavioral disturbance, hearing impairment and other non-auditory physical effects. Additional details on the behavioral reactions (or the lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix A (e) of L-DEO's application.

The notice of the proposed IHA also included a discussion of the potential effects of the bathymetric sonar. Because of the shape of the beam of this source

and its power, NMFS believes it unlikely that marine mammals will be exposed to bathymetric sonar at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans or pinnipeds to small numbers of signals from the multi-beam bathymetric sonar system are not likely to result in the harassment of marine mammals.

Monitoring and Mitigation Measures

Monitoring

L-DEO will conduct mammal monitoring of its seismic program, in order to implement the planned mitigation measures and to satisfy the requirements of the IHA. More information regarding the Monitoring program (including both visual observation and passive acoustic detection) was included in NMFS' proposed IHA (71 FR 58790, October 5, 2006).

Vessel Based Monitoring

Vessel-based marine mammal observers (MMOs) will watch for marine mammals near the seismic source vessel during all daytime airgun operations and during any start ups of the airguns at night. When feasible, observations will also be made during daytime periods without seismic operations (e.g., during transits).

During seismic operations in the Gulf of Mexico, five observers will be based aboard the vessel. MMOs will be appointed by L-DEO with NMFS concurrence. At least one MMO, and when practical two MMOs, will watch for marine mammals near the seismic vessel during ongoing daytime operations and nighttime start ups of the airguns. MMO(s) will be on duty in shifts of duration no longer than 4 h. The crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practicable). Before the start of the seismic survey the crew will be given additional instruction in how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 17.8 m (58.4 ft) above sea level, and the observer will have a good view around the entire vessel. However, neither the actual bow of the vessel nor the stern will be visible from the observation platform, although it will be possible to see the airguns. To monitor the areas immediately at the bow and stern of the vessel, two video cameras will be installed at the bow (one on the starboard and one on the port side), and a wide-angle camera will be installed at the stern. Real-time footage from these cameras will be played on the observation platform, so that the MMO(s) are able to monitor those areas. In addition a high-power video camera will be mounted on the observation platform to assist with species identification.

During daytime, the MMO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Fujinon), Big-eye binoculars (25 150), and with the naked eye. At night, Night Vision Devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly.

MMOs will not be on duty during ongoing seismic operations at night. At night, bridge personnel will watch for marine mammals. If the airguns are started up at night, two MMOs will watch for marine mammals near the source vessel for 30 min prior to start up of the airguns using NVDs, if the proper conditions for nighttime start up exist (see Mitigation below).

The vessel-based monitoring will provide data to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions or lack thereof, and thus to estimate the numbers of mammals potentially "taken" by harassment. It will also provide the information needed in order to power down or shut down the airguns at times when mammals are present in or near the safety radii. When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power-downs or shut downs (see Mitigation below) will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Passive Acoustic Monitoring

Passive acoustic monitoring will take place to complement the visual monitoring program. Visual monitoring typically is less effective during periods of bad weather or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, localization, and tracking of cetaceans. The acoustic monitoring will serve to alert visual observers when vocalizing cetaceans are detected. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected.

SEAMAP (Houston, TX) will be used as the primary acoustic monitoring system. This system was also used during previous L-DEO seismic cruises (e.g., Smultea *et al.*, 2004, 2005; Holst *et al.*, 2004a,b). The PAM system consists of hardware (i.e., the hydrophone) and software. The "wet end" of the SEAMAP system consists of a low-noise, towed hydrophone array that is connected to the vessel by a "hairy" faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer lab where the acoustic station and signal conditioning and processing system will be located. The lead-in from the hydrophone array is approximately 400 m (1312 ft) long, and the active part of the hydrophone array is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths of less than 20 m or 66 ft.

The acoustical array will be monitored 24 hours per day while at the seismic survey area during airgun operations and during most periods when airguns are not operating. One MMO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. MMOs

monitoring the acoustical data will be on shift from 1–6 h. All MMOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected, the acoustic MMO will contact the visual MMO immediately (so a power-down or shut down can be initiated, if required), and the information regarding the call will be entered into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, GMT date, GMT time when first and last heard and whenever any additional information was recorded, GPS position and water depth when first detected, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded onto the hard-drive for further analysis.

Mitigation

L-DEO's study in the northern Gulf of Mexico will deploy an energy source of up to 36 airguns (6600 in^3). The airguns comprising the array will be spread out horizontally, so that the energy will be directed mostly downward. This directionality will result in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level.

Localized and temporally-variable areas of concentrated feeding or of special significance for marine mammals may occur within or near the planned area of operations during the season of operations. However, L-DEO will avoid conducting the activities near important concentrations of marine mammals insofar as these can be identified in advance from other sources of information, or during the cruise.

Safety Radii

As noted earlier (Table 2), received sound levels were modeled by L-DEO for various configurations of the 36-airgun array in relation to distance and direction from the airguns, and for a single and 2 GI guns. Correction factors based on empirical measurements were applied to estimate safety radii in shallow and intermediate-depth water. The distances from the airguns where sound levels of 190, 180, and 160 dB re 1 μPa (rms) are estimated to be received are shown Table 2. Also, the safety radii for a single (40 in^3) airgun are given, as that source will be in operation when the 36-airgun array is powered down. Airguns will be powered down (or shut down if necessary) immediately when marine mammals are detected within or about to enter the appropriate radius: 180 dB (rms) for cetaceans, and 190 dB (rms) for pinnipeds, in the very unlikely event that pinnipeds are encountered.

Mitigation During Operations

Mitigation measures that will be required will include (1) speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) power-down procedures, (3) shut-down procedures, (4) special shut-down procedures for baleen whales at any distance, (5) ramp-up procedures, (6) avoidance of submarine canyons and areas with known concentrations of marine mammals, if possible, and (7) shut down and notification of NMFS if an injured or dead marine mammal is found and is judged likely to have resulted from the operation of the airguns.

Speed or Course Alteration—If a marine mammal or is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect to the planned science objectives. The activities and movements of the marine mammal or sea turtle (relative to the seismic vessel) will be closely monitored to determine whether the animal is approaching the applicable safety radius. If the animal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or a power-down or shut down of the airguns.

Power-down Procedures—A power-down involves decreasing the number of airguns in use such that the radius of the 18-dB (or 190-dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the safety zone. A power-down may also occur when the vessel is moving from one seismic line to another (ie., during a turn). During a power-down, one airgun will be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety zone but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the safety radius, the airguns will be powered down before the animal is within the safety radius. Likewise, if a mammal or turtle is already within the safety zone when first detected, the airguns will be powered down immediately. During a power-down of the airgun array, at least one airgun (e.g., 40 in3) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single airgun (Table 2), all airguns will be shut down (see next subsection).

Following a power-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it: (1) is visually observed to have left the safety zone; or, (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds; or, (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power-down whose duration has exceeded specified limits, the airgun array will be ramped up gradually. Ramp-up procedures are described below.

Shut-down Procedures—During a power-down, the operating airgun will be shut down if a marine mammal approaches within the modeled safety radius for the then-operating source, typically a single 40 in3 gun or a GI gun (Table 2). If a marine mammal is detected within or about to enter the appropriate safety radius around the small source in use during a power-down, airgun operations will be entirely shut down.

Airgun activity will not resume until the animal has cleared the safety zone, or until the MMO is confident that the marine mammal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the safety zone will be as described in the preceding subsection.

Special Shut-down Provision for Mysticetes—The airguns will be shut down (not just powered down) if a mysticete is sighted anywhere near the vessel, even if the whale is located outside the safety radius. This measure is planned because of the assumed greater effects of seismic surveys on mysticetes in general (as compared with other marine mammals).

Ramp-up Procedures – A ramp-up procedure will be followed when the airgun array begins operating after a specified-duration without airgun operations. For the present cruise, this period would be approximately 10 min. This duration is based on provisions

during previous L-DEO surveys and on the approximately 180–dB radius for the 4–string array in deep water in relation to the planned speed of the *Langseth* while shooting. Ramp up will begin with the smallest gun in the array. Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5–min period over a total duration of 20–30 min. During ramp up, the safety zone for the full airgun array to be used will be maintained.

If the complete safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp up will not commence unless at least one airgun has been operating during the interruption of seismic survey operations. That airgun will have a source level of more than 180 dB re 1 μPa . m (rms). It is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog (the array will definitely not be ramped up from a complete shut down at night in shallow water), because the outer part of the safety zone for the array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable safety radii during the day or close to the vessel at night.

Avoidance of Areas with Concentrations of Marine Mammals – Beaked whales may be highly sensitive to sounds produced by airguns, based mainly on what is known about their responses to other sound sources. Beaked whales tend to concentrate in continental slope areas, and especially in areas where there are submarine canyons on the slope. Therefore, L DEO will, if possible, avoid airgun operations over or near submarine canyons within the present study area. Also, if concentrations of beaked whales are observed at the slope site just prior to or during the airgun operations there, those operations will be moved to another location along the slope based on recommendations by the lead MMO aboard the *Langseth*. Furthermore, any areas where concentrations of sperm whales are known to be present will be avoided if possible.

Shutdown if Injured or Dead Whale is Found – In the unanticipated event that any cases of marine mammal injury or mortality are found and are judged likely to have resulted from these activities, L-DEO will cease operating seismic airguns and report the incident to the Office of Protected Resources, NMFS immediately.

Reporting

L-DEO will provide brief field reports on the progress of the project on a weekly basis.

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals and turtles that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, and all marine mammal and turtle sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

Estimated Take by Incidental Harassment

The notice of the proposed IHA (71 FR 58790, October 5, 2006) included an in-depth discussion of the methods used to calculate the densities of marine mammals in the area of the seismic airgun operation and the take estimates. Additional information was included in section VII of L-DEO's application. A summary of the total take authorized by NMFS is included here in Table 3. Generally, estimates of the numbers of marine mammals that might be affected during the seismic program in the northern Gulf of Mexico are based on consideration of the number of marine mammals that might be exposed to 160 dB along the 1420 km (767 nm) trackline of seismic surveys during the Gulf of Mexico program. The numbers of animals estimated below do not take into consideration the implementation of mitigation measures and, therefore, probably overestimate the take to some degree.

Because of the mitigation measures that will be required and the likelihood that some cetaceans will avoid the area around the operating airguns of their own accord, NMFS does not expect any marine mammals to approach the sound source close enough to be injured (Level A harassment). All anticipated takes would be "takes by Level B harassment", as described previously, involving temporary behavioral modifications or low level physiological effects.

The "best estimate" of the number of individual marine mammals that might be exposed, absent any mitigation measures, to seismic sounds with received levels 160 dB re 1 μPa (rms) is 3770 (Table 3). That total includes 22 endangered sperm whales, 25 beaked whales, and one Bryde's whale (Table 3). Pantropical spotted dolphins, Atlantic spotted dolphins, and bottlenose dolphins are expected to be the most common species in the study area; the best estimates for those species, absent any mitigation, are 1282, 876, and 773, respectively (Table 3). Estimates for other species are lower.

The "Maximum Estimate" column in Table 3 shows estimates totaling 7082 individual marine mammals based on maximum densities, and taking into account an adjustment for small numbers of other species that might be encountered in the survey area, even though there were not recorded during previous surveys. These are the numbers for which "take authorization" is requested. NMFS does not expect the total number of marine mammal takes to be this high, however, it is appropriate to err on the cautious side to ensure that L-DEO is covered in the event that an unexpectedly large number of any particular species were exposed to ≤160 dB during the survey and, further, to ensure that this exposure would result in a negligible impact to the species or stock.

Based on numbers of animals encountered during L-DEO's 2003 cruise in the Gulf of Mexico, the likelihood of the successful implementation of the required mitigation measure, and the likelihood that some animals will avoid the area around the operating airguns, NMFS believes that L-DEOs airgun calibration and seismic testing program may result in the Level B harassment of some lower number of individual marine mammals than is indicated by the "best estimates" in Table 3. These best estimates compose no more than 3.9 percent of any given species population in the northern Gulf of Mexico, and NMFS has determined that these numbers are small relative to the population sizes in the specified geographic area (Table 3). L-DEO has asked for authorization for take of their "maximum estimate" of numbers for each species, which includes the take of two hooded seals. Though NMFS believes that take of the maximum numbers is unlikely, we still find these numbers small (up to 8.3 percent of the Fraser's dolphin population and 7.7 percent of the spinner dolphin

population, but less than 5 percent the others) relative to the population sizes.

Potential Effects on Habitat

A detailed discussion of the potential effects of this action on the marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates, was included in the notice of the proposed IHA (71 FR 58790, October 5, 2007).

The main impact issue associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals. Based on the discussion in the proposed IHA, the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks.

Negligible Impact Determination

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting an acoustic calibration and seismic testing program in the Gulf of Mexico may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B Harassment) of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the airguns, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of seismic operations, the number of potential harassment takings is estimated to be relatively small in light of the population size (see Table 3). NMFS anticipates the actual take of individuals to be lower than the numbers depicted in the table, because those numbers do not reflect either the implementation of the mitigation measures or the fact that some animals will avoid the sound at levels lower than those expected to result in harassment. Additionally, mitigation measures require that the *Langseth* avoid any areas where marine mammals are concentrated.

In addition, no take by death and/or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document. This determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the seismic array, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) TTS is unlikely to occur, especially in odontocetes, until levels above 180 dB re 1 μPa are reached; (3) the fact that injurious levels of sound are only likely close to the vessel; and (4) the likelihood of detection of marine mammals within the safety radii developed to avoid injury is high due to the height of the *Langseth*'s bridge and the use of a passive acoustic detection system.

Endangered Species Act

Pursuant to section 7 of the ESA, the National Science Foundation (NSF) has consulted with NMFS on this seismic survey. NMFS has also consulted internally pursuant to Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. In a Biological Opinion (BO), NMFS concluded that the 2007 L-DEO seismic survey in the northern GOM and the issuance of the associated IHA are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat. NMFS has issued an incidental take statement (ITS) for 22 sperm whales (as well as a number of individuals of green, hawksbill, Kemp's ridley, leatherback, and loggerhead sea turtles) that contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. The terms and conditions of the Biological Opinion that apply to listed marine mammals have been incorporated into the IHA.

National Environmental Policy Act (NEPA)

In 2003, NSF prepared an Environmental Assessment (EA) for a marine seismic survey by the R/V Maurice Ewing in the Northern Gulf of Mexico. This EA addressed the potential effects of a different combination of airgun arrays (20 airguns, total volume 8580 in3) being operated in the same part of the ocean and affecting the same populations of marine mammals as is proposed for the *Langseth* in this application. NMFS adopted NSF's EA in 2003 and prepared a supplemental EA in 2007 to clarify the differences between the two activities and their potential effects on the environment. NMFS has issued a Finding of Significant based on NSF's 2003 EA and NMFS supplemental EA.

Conclusions

Based on the preceding information, and provided that the required mitigation and monitoring are incorporated, NMFS has concluded that the activity will incidentally take, by Level B harassment only, small numbers of marine mammals. NMFS has further determined that L-DEO's calibration study will have a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses.

Authorization

NMFS has issued an IHA to L-DEO for an acoustic calibration and seismic testing program in the northern Gulf of Mexico in Fall, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 27, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–16013 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet September 20, 2007.

Date and Time: The meeting is scheduled as follows: September 20, 2007, 9 a.m.–4 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 1:30 p.m.

ADDRESSES: The meeting will be held in the Auditorium of the National Association of Home Builders Building, Washington, DC, located at 1201 15th Street, NW., Washington, DC 20005. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code. Accordingly, portions of this meeting which involve the ongoing review and implementation of the April 2003 U.S. Commercial Remote Sensing Space Policy and related national security and foreign policy considerations for NOAA's licensing decisions are closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will receive updates on NOAA's licensing activities and foreign systems. The committee will also be available to receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Kay Weston, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from David Hasenauer at (301) 713–2024 ext. 207, fax (301) 713–2032, or e-mail *David.Hasenauer@noaa.gov*.

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS International and Interagency Affairs Office on or before September 12, 2007, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Kay Weston, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7313, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Kay.Weston@noaa.gov*, or David Hasenauer at telephone (301) 713–2024 x207, e-mail *David.Hasenauer@noaa.gov*.

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. E7–15982 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–HR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 9, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 15, 2007.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain circular knit, three-end fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf*. Reference number: 25.2007.07.06.Fabric.ST&RforGaranMfg.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of the CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On July 6, 2007, the Chairman of CITA received a request from Sandler, Travis & Rosenberg, P.A., on behalf of their client, Garan Manufacturing, for certain circular knit, three-end fleece fabrics of the specifications detailed below. On July 10, 2007, CITA notified interested parties of, and posted on its website, the accepted request and requested that any interested entity provide, by July 20, 2007, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by July 26, 2007.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to

supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Specifications:

HTS Subheading:	6001.21
Fiber Content:	70% cotton / 30% polyester
Average Yarn Number:	
	Face yam - 100% combed cotton; 50/1 to 57/1 metric (30/1 to 34/1)
	Tie yam - 100% fila ment-polyester, 179 metric / 48 filaments; (50 denier / 48 filaments)
	Fleece yam - 60% combed cotton/40% polyester; 18/1 to 20/1 metric (9/1 to 12/1)
Gauge:	19
Weight:	271 to 300 grams per square meter (8.0 to 8.85 ounces per square yard)
Width:	152 to 183 centimeters (60 to 72 inches)
Finish:	(Piece) dyed; printed

In addition, technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

Vertical and horizontal shrinkage must be less than 5%

Torque may not exceed 4%

All fabrics must have a Class 1 flammability rating

For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–16017 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 9, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 15, 2007.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain circular knit, three-end fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.* Reference number: 28.2007.07.06.Fabric.ST&RforGaranMfg.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of the CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On July 6, 2007, the Chairman of CITA received a request from Sandler, Travis & Rosenberg, P.A., on behalf of their client, Garan Manufacturing, for certain circular knit, three-end fleece fabrics of the specifications detailed below. On July 10, 2007, CITA notified interested parties of, and posted on its website, the accepted request and requested that any interested entity provide, by July 20, 2007, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by July 26, 2007.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Specifications:

HTS Subheading:	6001.21
Fiber Content:	70% cotton / 30% polyester
Average Yarn Number:	
	Face yam - 100% combed cotton; 47/1 to 57/1 metric (28/1 to 34/1)
	Tie yam - 100% fila ment polyester, 120 metric / 48 filaments; (75 denier / 36 filaments)

	Fleece yarn - 60% combed cotton/40% polyester; 17/1 to 24/1 metric(10/1 to 14/1)
Gauge:	18
Weight:	271 to 300 grams per square meter (8.0 to 8.85 ounces per square yard)
Width:	152 to 183 centimeters (60 to 72 inches)
Finish:	(Piece) dyed; printed

In addition, technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

Vertical and horizontal shrinkage must be less than 5%

Torque may not exceed 4%

All fabrics must have a Class 1 flammability rating

For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–16056 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 9, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 15, 2007.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain circular knit, three-end fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.* Reference number: 27.2007.07.06.Fabric.ST&RforGaranMfg

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of the CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On July 6, 2007, the Chairman of CITA received a request from Sandler, Travis & Rosenberg, P.A., on behalf of their client, Garan Manufacturing, for certain circular knit, three-end fleece fabrics of the specifications detailed below. On July 10, 2007, CITA notified interested parties of, and posted on its website, the accepted request and requested that any interested entity provide, by July 20, 2007, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by July 26, 2007.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Specifications:

HTS Subheading:	6001.21
Fiber Content:	70% cotton / 30% polyester
Average Yarn Number:	
	Face yam - 100% combed cotton; 50/1 to 57/1 metric (30/1 to 34/1)
	Tie yam -100% filament polyester, 179 metric/ 48 filaments; (50denier / 48 filaments)
	Fleece yam - 60% combed cotton/40% polyester; 18/1 to 20/1 metric(9/1 to 12/1)
Gauge:	21
Weight:	271 to 300 grams per square meter (8.0 to 8.85 ounces per square yard)
Width:	152 to 183 centimeters (60 to 72 inches)
Finish:	(Piece) dyed; printed

In addition, technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

Vertical and horizontal shrinkage must be less than 5%

Torque may not exceed 4%

All fabrics must have a Class 1 flammability rating

For optimum fabric integrity and stitch definition, this fabric must be knit

on machines whose number of yarn feeds is a multiple of 3.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–16058 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 9, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 15, 2007.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain circular knit, three-end fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ONLINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.* Reference number: 26.2007.07.06.Fabric.ST&RforGaranMfg

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party.

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No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Specifications:

HTS Subheading:	6001.21
Fiber Content:	70% cotton / 30% polyester
Average Yarn Number:	Face yam - 100% combed cotton; 50/1 to 57/1 metric (30/1 to 34/1) Tie yarn - 100% fila ment polyester, 179 metric / 48 filaments; (50 denier / 48 filaments) Fleece yarn - 60% combed cotton/40% polyester; 18/1 to 20/1 metric (9/1 to 12/1)
Gauge:	20
Weight:	271 to 300 grams per square meter (8.0 to 8.85 ounces per square yard)
Width:	152 to 183 centimeters (60 to 72 inches)
Finish:	(Piece) dyed; printed

In addition, technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:
Vertical and horizontal shrinkage must be less than 5%
Torque may not exceed 4%
All fabrics must have a Class 1 flammability rating

For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–16059 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 9, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 15, 2007.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain

circular knit, three-end fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.* Reference number: 29.2007.07.06.Fabric.ST&RforGaranMfg

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

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The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party.

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No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Specifications:

HTS Subheading:	6001.21
Fiber Content:	70% cotton / 30% polyester
Average Yarn Number:	
	Face yam - 100% combed cotton; 47/1 to 57/1 metric (28/1 to 34/1)
	Tie yam -100% filament polyester, 120 metric / 48 filaments; (75 denier / 36 filaments)
	Fleece yam - 60% combed cotton/40% polyester; 17/1 to 24/1 metric (10/1 to 14/1)
Gauge:	20
Weight:	271 to 300 grams per square meter (8.0 to 8.85 ounces per square yard)
Width:	152 to 183 centimeters (60 to 72 inches)
Finish:	(Piece) dyed; printed

In addition, technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:
Vertical and horizontal shrinkage must be less than 5%
Torque may not exceed 4%
All fabrics must have a Class 1 flammability rating

For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–16061 Filed 8–14–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request: Proposed Collection; Comment Request: Rules Pertaining to Contract Markets and Their Members

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the CFTC is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Rules Pertaining to Contract Markets and Their Members; [OMB Control Number 3038–0022]. Before submitting the ICR to OMB for review and approval, the CFTC is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 15, 2007.

ADDRESSES: Comments may be mailed to Riva Spear Adriance, Commodity Futures Trading Commission, Division of Market Oversight, 202–418–5494, fax 202–418–5527, e-mail *radriance@cftc.gov*. Refer to OMB Control No. 3038–0022.

FOR FURTHER INFORMATION CONTACT: Riva Spear Adriance, 202–418–5494, fax 202–418–5527, e-mail *radriance@cftc.gov*.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are registered entities (designated contract markets, registered derivatives transaction execution facilities and registered derivatives clearing organizations) planning to implement new rules and rule amendments by either seeking prior approval or (for most rules) certifying to the Commission that such rules or rule amendments do not violate the Act or Commission regulations. Rules 40.2, 40.3, 40.4, 40.5 and 40.6 implement these statutory provisions.

Title: Proposed Collection; Comment Request: Rules Pertaining to Contract Markets and Their Members.

Abstract: Section 5c(c) of the Commodity Exchange Act, 7 U.S.C. 7a–2(c), establishes procedures for registered entities (designated contract markets, registered derivatives transaction execution facilities and registered derivatives clearing organizations) to implement new rules and rule amendments by either seeking prior approval or (for most rules) certifying to the Commission that such rules or rule amendments do not violate the Act or Commission regulations. Rules 40.4, 40.5 and 40.6 implement these statutory provisions.

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981).

The Commission would like to solicit comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, usefulness, and clarity of the information to be collected; and
- Minimize the burden of 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.

Burden of Statement: The respondent burden for this collection is estimated to average .83 hours per response. These estimates include 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; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 11,006.

Estimated number of responses: 13,118.

Estimated total Annual Burden on Respondents: 57 hours.

Frequency of Collection: On occasion.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 purpose 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; and transmit or otherwise disclose the information.

Dated: August 9, 2007.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–3979 Filed 8–14–07; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

(Transmittal Nos. 07–32)

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–32 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 03 2007

In reply refer to:
I-07/006103-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-32, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $465 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 07-32

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$440 million
Other	$ 25 million
TOTAL	$465 million

(iii) (Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 10,000 Joint Direct Attack Munitions (JDAM) tail kits; 2,500 PAVEWAY II full kits for the MK-82 warhead; 500 PAVEWAY II full kits for the MK-83 warhead; 1,000 PAVEWAY II full kits for the MK-84 warhead; 10,000 MK-84 live bombs; 1,500 MK-82 live bombs; 2,000 BLU-109 live bombs; 50 GBU-28 guided live bombs; 10,000 FMU-139 live fuze components; and 10,000 FMU-152 live fuze components. Also included: Containers, bomb components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.

(iv) Military Department: Air Force (AMW)

(v) Prior Related Cases, if any: numerous FMS cases pertaining to various munitions

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: AUG 09 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – Various Munitions and Weapon Systems

The Government of Israel has requested a possible sale of 10,000 Joint Direct Attack Munitions (JDAM) tail kits; 2,500 PAVEWAY II full kits for the MK-82 warhead; 500 PAVEWAY II full kits for the MK-83 warhead; 1,000 PAVEWAY II full kits for the MK- 84 warhead; 10,000 MK-84 live bombs; 1,500 MK-82 live bombs; 2,000 BLU-109 live bombs; 50 GBU-28 guided live bombs; 10,000 FMU-139 live fuze components; and 10,000 FMU-152 live fuze components. Also included: Containers, bomb components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.

Israel's strategic position makes it vital to the United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support Israeli commitment to peace with other regional Arab countries, enhance regional stability and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interest to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale will contribute significantly to U.S. strategic and tactical objectives. Israel will maintain its qualitative edge with a balance of new weapons procurement and upgrades supporting its existing systems. To support this objective, the United States must provide timely and robust assistance that will help protect the sovereignty of the State of Israel. Israel, which already has these munitions in its inventory will have no difficulty absorbing these additional kits.

The principal contractors will be:

McDonnell Douglas Corporation (subsidiary of the Boeing Company), St. Charles, Missouri
Alliant Techsystems Incorporated, Janesville, Wisconsin
Alliant Techsystems Incorporated Clearwater, Florida
Lockheed-Martin Aerospace Corporation, Fort Worth, Texas
Northrup Grumman Company, Los Angeles, California
Honeywell Corporation Clearwater, Florida
General Dynamics, Garland, Texas

There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-32

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Direct Attack Munition (JDAM) is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS)/Global Positioning System (GPS) guidance to unguided bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates
INS/GPS capability
Operational Test and Evaluation Plan

2. The PAVEWAY II series of laser guided bombs consists of a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. At the core of each PAVEWAY II Munition Kit is a dumb bomb. A laser guidance kit is integrated with each dumb bomb to add the requisite level of accuracy. The kit consists of a computer-controlled group at the front end of the weapon and an airfoil group at the back. When a laser --either airborne or ground-based-- illuminates a target, the guidance fins react to signals from the control group and steer the weapon to the target. This precision-guided munition offers improved accuracy over free-fall bombs, thus providing the potential for reduced collateral damage.

3. The Guided Bomb Unit (GBU-28) is a special weapon that was developed for penetrating hardened facilities located deep underground. The GBU-28 is a 5,000-pound laser-guided conventional munition. The GBU-28 bomb body (BLU-113) weighs 4,637 pounds, contains 630 pounds of high explosives, is 14.5 inches in diameter and almost 19 feet long. It is fitted with a derivative of the GBU-27 Laser Guided Bomb guidance kit and airfoil group. The GBU-28 is classified Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–3980 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 07–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 Dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–38 with attached transmittal, and policy justification.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 0 3 2007

In reply refer to:
I-07/008225-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-38, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Bahrain for defense articles and services estimated to cost $160 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) (C) Prospective Purchaser: Bahrain

(ii) (C) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$160 million
TOTAL	$160 million

(iii) (C) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: six Bell 412 Air Search and Recovery Helicopters configured with PT6T-9 engines and electronic engine control, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government (USG) support, and contractor representatives' engineering and technical support services, and other related elements of logistics support.

(iv) (C) Military Department: Army (WAA)

(v) (C) Prior Related Cases, if any: none

(vi) (C) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) (C) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) (C) Date Report Delivered to Congress: AUG 0 3 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain – Bell 412 Air Search and Recovery Helicopters

The Government of Bahrain has requested a possible sale of six Bell 412 Air Search and Recovery Helicopters configured with PT6T-9 engines and electronic engine control, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government (USG) support, and contractor representatives' engineering and technical support services, and other related elements of logistics support. The estimated cost is $160 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Bahrain plans to increase its air mobility capabilities and continue its force modernization program. These defense enhancements promote continued interoperability with U.S. forces, assist in the cooperative defense of neighboring states, and increase Bahrain's capability as a partner in the Global War on Terror.

The helicopters will be used for various military operations to include the protection of sovereign borders as well as the protection and defense of U.S. and coalition strategic facilities. The proposed sale of Bell helicopters will greatly enhance Bahrain's military functionality by increasing deterrence capabilities.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Bell Textron of Fort Worth, Texas and Bell Textron of Canada. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one Contractor Field Service representative to Bahrain for one year to assist in the delivery and deployment of the helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–3981 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 07–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 0 3 2007
In reply refer to:
I-07/008285-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-39, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Brazil for defense articles and services estimated to cost $58 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Brazil

(ii) Total Estimated Value:

Major Defense Equipment*	$ 32 million
Other	$ 26 million
TOTAL	$ 58 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Integrated Combat Systems for five (5) submarines and one (1) shore-based training facility. The Integrated Combat System is the Lockheed Martin Corporation's integrated submarine sensor, which includes fire control weapons control suites. Also requested are software and systems integration to interface the Integrated Combat System with the MK-48 AT torpedoes, weapon system software, support equipment, spare and repair parts, publications and technical data, training, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Navy (LDA)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: AUG 0 7 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Brazil – Integrated Combat System

The Government of Brazil has requested a possible sale of Integrated Combat Systems for five (5) submarines and one (1) shore-based training facility. The Integrated Combat System is the Lockheed Martin Corporation's integrated submarine sensor, which includes fire control weapons control suites. Also requested are software and systems integration to interface the Integrated Combat System with the MK-48 AT torpedoes, weapon system software, support equipment, spare and repair parts, publications and technical data, training, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $58 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in South America.

The proposed sale will further build the capacity of the Brazilian Armed Forces by improving the capabilities of its TUPI and TIKUNA class submarines as well as the shore-based training facility. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor will be: Lockheed Martin of Manassas, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale does not require the assignment of contractor/U.S. Government representatives to Brazil.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Classified Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Integrated Combat System is the Lockheed Martin Corporation's integrated submarine sensor, which includes fire control weapons control suites, and includes the following component parts: four (4) Multi-Function Control Consoles for Fire Control and Sonar Control, two (2) Weapons Control Manager consoles, two (2) Local Control panels, Cylindrical Array Sonar processing equipment, Active Intercept Sonar processing equipment, navigation plotting tables, digital charts, and Identification Friend or Foe (IFF).

2. The Progeny Systems Multi-Tube Weapons Simulator (MTWS) is a training aid used to conduct training simulations of the MK-48 AT torpedo in conjunction with the Integrated Combat System, and contains sensitive technology.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–3982 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

(Transmittal No. 07–40)

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–40 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 0 3 2007

In reply refer to:
I-07/008286-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-40, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Spain for defense articles and services estimated to cost $780 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Spain

(ii) Total Estimated Value:

Major Defense Equipment*	$461 million
Other	$319 million
TOTAL	$780 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Major Defense Equipment: two MK 7 AEGIS Weapons Systems; two MK 41 Baseline VII Vertical Launch Systems; and two MK 45 MOD 2 5" Gun Mounts. Non-MDE includes: AN/SLQ-25A Torpedo Countermeasure System; UHF SATCOM Terminal; AN/WSN-7, Ring Laser Gyro; AN/ARR-75, Radio Receiving Set; Aviation Support System; MK III Shipboard System Light Airborne Multi-Purpose System (LAMPS); AN/BQN-7A, Bathythermograph Set; AN/WSN-8A, Digital Electromagnetic Log; Common Data Link Management System (CDLMS)/Command and Control Processor (C2P); Multifunctional Information Distribution System on Ships; MK 162 MOD 1 Shipboard Gridlock System; Navigation Sensor System Interface (NAVSSI)/Global Positioning System; AN/SLA-10B, Video Blanking Equipment. Also included are system integration and testing, communications and support equipment, computer programs and maintenance support, ship integration, spare and repair parts, supply support, publications and technical data, training, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $780 million.

(iv) Military Department: Navy (LGB, Amendment 1)

(v) Prior Related Cases, if any:
FMS case LFG - $749 million - 27Dec04
FMS case LGB - $456 million - 26Jun06

* as defined in Section 47(6) of the Arms Export Control Act.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** AUG 03 2007

POLICY JUSTIFICATION

Spain – AEGIS Weapons System

The Government of Spain has requested a possible sale of two MK 7 AEGIS Weapons Systems; two MK 41 Baseline VII Vertical Launch Systems; and two MK 45 MOD 2 5" Gun Mounts. Non-MDE includes: AN/SLQ-25A Torpedo Countermeasure System; UHF SATCOM Terminal; AN/WSN-7, Ring Laser Gyro; AN/ARR-75, Radio Receiving Set; Aviation Support System; MK III Shipboard System Light Airborne; Multi-Purpose System (LAMPS); AN/BQN-7A, Bathythermograph Set; AN/WSN-8A, Digital Electromagnetic Log; Common Data Link Management System (CDLMS)/Command and Control Processor (C2P); Multifunctional Information Distribution System on Ships; MK 162 MOD 1 Shipboard Gridlock System; Navigation Sensor System Interface (NAVSSI)/Global Positioning System; AN/SLA-10B, Video Blanking Equipment. Also included are system integration and testing, communications and support equipment, computer programs and maintenance support, ship integration, spare and repair parts, supply support, publications and technical data, training, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $780 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Spain and enhancing standardization and interoperability with U.S. forces. This proposed sale will improve the Spanish Navy's ability to participate in coalition operations, provide common logistical support with the U.S. Navy, and enhance the lethality of its new frigate program. Spain will have no difficulty absorbing these additional AEGIS systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

Lockheed-Martin Maritime System and Sensors, Moorestown, New Jersey
Raytheon Company, Equipment Division, Andover, Massachusetts
General Dynamics, Armament Systems, Burlington, Vermont
Lockheed Martin Maritime Systems and Sensors, Eagan, Minnesota

Offset agreements associated with this proposed sale are expected, but are undetermined at this time, and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 07-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AEGIS Weapon System (AWS) hardware is Unclassified, with the exception of the radio frequency oscillator used in the fire control transmitter; which is classified Confidential. AEGIS documentation in general is Unclassified; however, seven operation and maintenance manuals are classified Confidential, and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to those necessary for operational and organizational maintenance.

2. While the hardware associated with the AN/SPY-1D(V) radar is Unclassified, the computer programs are classified Secret. It is the combination of the AN/SPY-1D(V) hardware and the computer programs that constitutes the sensitive technology aspects. The AN/SPY-1D(V) radar hardware design and production data will not be released with this proposed sale. Some computer program documentation at the Secret level explaining the capabilities of the systems will be released to support Spanish understanding of US computer program development efforts.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–3983 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 07–41]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–41 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 03 2007

In reply refer to:
I-07/008299-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-41, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $125 million in accordance with the Taiwan Relations Act, P.L. 96-8. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 07-41

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$110 million
Other	$ 15 million
TOTAL	$125 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 60 AGM-84L HARPOON Block II missiles, 2 HARPOON guidance control units, 30 HARPOON containers, 30 HARPOON extended air-launch lugs, 50 HARPOON upgrade kits from AGM-84G to AGM-84L configuration, missile modifications, test equipment and services, spares and repair parts for support equipment, training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.

(iv) Military Department: Navy (LGV)

(v) Prior Related Cases, if any:
FMS case LEZ - $66 million - 02 Sep 93
FMS case LFV - $84 million - 18 Jun 97
FMS case LGB - $86 million - 30 Sep 98
MS case LGI - $110 million - 13 Sep 01
MS case LGN - $37 million - 30 May 03

* as defined in Section 47(6) of the Arms Export Control Act.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** AUG 0 3 2007

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - AGM-84L HARPOON Block II Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 60 AGM-84L HARPOON Block II missiles, 2 HARPOON guidance control units, 30 HARPOON containers, 30 HARPOON extended air-launch lugs, 50 HARPOON upgrade kits from AGM-84G to AGM-84L configuration, missile modifications, test equipment and services, spares and repair parts for support equipment, training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is $125 million.

This proposed sale serves U.S. national economic and security interests by supporting the recipient's continuing efforts to modernize its armed forces and enhance its defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

This sale is consistent with United States law and policy as expressed in Public Law 96-8. The U.S. is committed to providing military assistance under the terms of the Taiwan Relations Act.

The recipient uses HARPOON missiles to enhance its self-defense capabilities. The recipient has previously purchased both air and surface launched HARPOON missiles and will be able to absorb and effectively utilize the additional missiles.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the recipient.

The prime contractor will be McDonnell Douglas Company, a wholly owned subsidiary of Boeing Company in St. Louis, Missouri. Although the purchaser generally requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-41

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AGM-84L HARPOON Block II missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker
b. Global Positioning System/Inertial Navigation System (GPS/INS)
c. Operational Flight Program (OFP)
d. Missile operational characteristics and performance data
e. Costal Targeting Suppression

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–3984 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 07–45]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–45 with attached transmittal, and policy justification.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 0 3 2007

In reply refer to:
I-07/009081-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-45, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Morocco for defense articles and services estimated to cost $29 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Morocco

(ii) Total Estimated Value:

Major Defense Equipment*	$18 million
Other	$11 million
TOTAL	$29 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 60 M109A5 155mm self-propelled howitzers, 30 High Mobility Multi-purpose Wheeled Vehicle engines, 233 wheel assemblies, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team support services, U. S. Government logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Army (URT)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: AUG 0 3 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco - M109A5 155mm Self-propelled Howitzers

The Government of Morocco has requested a possible sale of 60 M109A5 155mm self-propelled howitzers, 30 High Mobility Multi-purpose Wheeled Vehicle engines, 233 wheel assemblies, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team support services, U. S. Government logistics personnel services, and other related elements of logistics support. The estimated cost is $29 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be an important force for political stability and economic progress in North Africa.

Morocco currently operates M109A1B self-propelled howitzers and will use this new procurement to re-equip existing units, retire older artillery pieces, and modernize the Army's fire support capability. Morocco will have no difficulty absorbing the howitzers into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

No contractor is involved for this purchase of the howitzers. Equipment is considered long supply and is no longer utilized by the U.S. Government.

There will be a U.S. Government Quality Assurance Team in country for one year to check out the equipment. A Technical Assistance Field Team also will participate for two-week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–3985 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 07–47]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–47 with attached transmittal, policy justification, and sensitivity of technology.

Dated: August 8, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 2 2007

In reply refer to:
I-07/009147-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-47, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost $209 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 07-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$ 85 million
Other	$124 million
TOTAL	$209 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 59 AN/ALR-67(V)3 Radar Warning Receivers, 24 AN/ALR-67(V)3 Partial Ship-sets, test program sets, adaptors, test sets and support equipment, spare and repair parts, personnel training and training equipment, technical assistance, and other related elements of logistics support.

(iv) Military Department: Navy (LIE)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: AUG 03 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - AN/ALR-67(V)3 Radar Warning Receivers

The Government of Canada has requested a possible sale of 59 AN/ALR-67(V)3 Radar Warning Receivers, 24 AN/ALR-67(V)3 partial ship-sets, test program sets, adaptors, test sets and support equipment, spare and repair parts, personnel training and training equipment, technical assistance, and other related elements of logistics support. The estimated cost is $209 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces. Canadian deployments in support of peacekeeping and humanitarian operations have made a significant impact to global political and economic stability and have served U.S. national security interests.

Canada plans to upgrade avionics on its F/A-18 aircraft. The AN/ALR-67(V)3 features will provide a capability common to other coalition military forces.

The proposed sale of this equipment and support to Canada will not affect the basic military balance in the region.

Implementation of this proposed sale will require the assignment of two contractor representatives to Canada. United States Government and contractor representatives participating in technical reviews for one-week intervals twice annually.

The principal contractors will be: Raytheon Corporation in Waltham, Massachusetts and Boeing Company in St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

highly sensitive equipment, the technology could be easily absorbed; thereby permitting development of countermeasures which could reduce overall weapon system effectiveness.

Transmittal No. 07-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/ALR-67(V)3 Electric Warfare Countermeasures Receiving Set is classified Confidential. The AN/ALR-67(V)3 provides the F/A-18 aircrew with radar threat warnings by detecting and evaluating friendly and hostile radar frequency threat emitters and providing identification and status information about the emitters to on-board Electronic Warfare (EW) equipment and the aircrew. The Operational Flight Program (OFP) and User Data Files (UDF) used in the AN/ALR-67(V)3 are classified Secret. Those software programs contain threat parametric data used to identify and establish priority of detected radar emitters.

2. If a technologically capable adversary were to obtain knowledge of this highly sensitive equipment, the technology could be easily absorbed; thereby permitting development of countermeasures which could reduce overall weapon system effectiveness.

[FR Doc. 07–3986 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.
ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, September 24, 2007, from 8 a.m. to 11:10 a.m. The closed Executive Session will be held from 11:10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Russell Senate Office Building, Room 385, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Koy, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone: 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. The proposed closed session from 11:10 a.m.–12 p.m. will include a discussion of new and pending courts-martial and state criminal proceedings involving the Midshipmen attending the Naval Academy to include an update on the pending/ongoing sexual assault cases, rape cases, etc. The proposed closed session from 11:10 a.m. to 12 p.m. will include a discussion of new and pending administrative/minor disciplinary infractions and non judicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c) (5), (6), and (7) of title 5, United States Code.

Dated: August 8, 2007.

T. M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–15981 Filed 8–14–07; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0045]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.
ACTION: Notice to amend system of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 14, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 9, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05512–2

SYSTEM NAME:

Badge and Access Control System (May 17, 2004, 69 FR 27898).

CHANGES:

SYSTEM LOCATION:

At the end of first para delete "*http://neds.daps.dla.mil/sndl.htm*" and replace with "*http://doni.daps.dla.mil/sndl.aspx.*"

SYSTEM MANAGER(S) AND ADDRESS:

Delete para 2 and replace with: "Record Holder: Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*"

NOTIFICATION PROCEDURE:

At the end of para 1, delete "*http://neds.nebt.daps.mil/sndl.htm*" and replace with "*http://doni.daps.dla.mil/sndl.aspx.*"

RECORD ACCESS PROCEDURES:

At the end of para 1, delete "*http://neds.nebt.daps.mil/sndl.htm*" and replace with "*http://doni.daps.dla.mil/sndl.aspx.*"

NM05512–2

SYSTEM NAME:

Badge and Access Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy.

Official mailing addresses are published in the Standard Navy Distribution List that is available at "*http://doni.daps.dla.mil/sndl.aspx.*"

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy/combatant command and any visitor (military, civilian, or contractor) requiring access to a controlled facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business; visitor clearance data for individuals to visit a Navy/Marine Corps base/activity/

contractor facility; barring lists and letters of exclusion; badge/pass issuance records; and information that reflects time of entry/exit from facility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 5530.14C, Navy Physical Security; Marine Corps Order P5530.14, Marine Corps Physical Security Program Manual; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain all aspects of proper access control; to issue badges, replace lost badges and retrieve passes upon separation; to maintain visitor statistics; collect information to adjudicate access to facility; and track the entry/exit times of personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To designated contractors, Federal agencies, and foreign governments for the purpose of granting Navy officials access to their facility.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), case number, organization, and company's name.

SAFEGUARDS:

Access is provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Badges and passes are destroyed three months after return to issuing office. Records and issuance are destroyed six months after new accountability system is established or one year after final disposition of each issuance record is entered in retention log or similar record, whichever is earlier. Visit request records are destroyed two years after final entry or two years after date of document, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Operations (N09N2), 2000 Navy Pentagon, Washington, DC 20350–2000.

Record Holder: Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

Requests should contain individual's full name, Social Security Number (SSN), and signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

Requests should contain individual's full name, Social Security Number (SSN), and signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Visit requests, individual, records of the activity, investigators, witnesses, contractors, and companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 07–3989 Filed 8–14–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, U.S. Navy, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The U.S. Marine Corps is deleting a system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Effective August 15, 2007.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete a system of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: August 9, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

MMN00032

SYSTEM NAME:

Personal History Card File (February 22, 1993, 58 FR 10630).

REASON:

With the U.S. Marine Corps being a principal component of the Department of Navy, they are combining like systems. These records are now filed in the Navy's NM105512–2, Badge and Access Control System which was published in the **Federal Register** on May 17, 2004 with Number 69 FR 27898.

[FR Doc. E7–16001 Filed 8–14–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0046]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 14, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 9, 2007.

C.R. Choate

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Changes

N07421–1

SYSTEM NAME:

Time and Attendance Feeder Records (July 23, 2007, 72 FR 40126).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

At beginning of entry add "This system is sometimes referred to as Standard Labor Data Collection and Distribution Application (SLDCADA), it maintains"

* * * * *

SAFEGUARDS:

Delete entry and replace with "Computer processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records and computer printouts are only available to authorized personnel having a need-to-know. Access to individual computers are controlled by Common Access Card (CAC) or user-id and password protected. Access to the application through the web client is controlled by Public Key Infrastructure (PKI) authentication. Each user has an individual user id and password or PKI certificate for access to web service. Transfer of data is accomplished through data encryption."

* * * * *

NM07421–1

SYSTEM NAME:

Time and Attendance Feeder Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is sometimes referred to as Standard Labor Data Collection and Distribution Application (SLDCADA), it maintains time and attendance data and labor distribution data that includes name, Social Security Number (SSN), work location, job order number, task orders, leave accrual data, occupational series, grade, pay period identification, time card certification information, special pay categories, work schedule, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

Records are being collected and maintained for the purpose of tracking time and attendance and labor distribution data for civilian, military, and contractor labor against job order numbers for financial purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), organization, pay period.

SAFEGUARDS:

Computer processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records and computer printouts are only available to authorized personnel having a need-to-know. Access to individual computers are controlled by Common Access Card (CAC) or user-id and password protected. Access to the application through the web client is controlled by Public Key Infrastructure (PKI) authentication. Each user has an individual user id and password or PKI certificate for access to web service. Transfer of data is accomplished through data encryption.

RETENTION AND DISPOSAL:

Feeder reports are maintained at the local office for 6 years and then destroyed. Data base information held by the Defense Information Systems Agency is retained for 6 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Deputy Assistant Secretary of the Navy (Civilian Personnel/Equal Employment Opportunity), 1000 Navy Pentagon, Washington, DC 20350–1000.

Record Holders: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer for their organization. Official mailing addresses are published in the SNDL that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Requests should contain the individual's full name, home address, Social Security Number (SSN), organization, pay period, and signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commanding Officer for their organization. Official mailing addresses are published in the SNDL at *http://doni.daps.dla.mil/sndl.aspx.*

Requests should contain the individual's full name, home address, Social Security Number (SSN), organization, pay period, and signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, time sheets, and work schedules.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–16002 Filed 8–14–07; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 14, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated; August 9, 2007.

Delores J. Barber,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision of a currently approved collection.

Title: System Clearance for Cognitive, Pilot and Field Test Studies.

Frequency: One Time.

Affected Public: Individuals or household; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,500. Burden Hours: 4,000.

Abstract: This is a request for a revision to the generic clearance for the National Center for Education Statistics to conduct various procedures to test questionnaires and survey procedures. These procedures include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3386. 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. E7–15946 Filed 8–14–07; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are

followed. Approval by the Office of Management and Budget (OMB) has been requested by August 17, 2007.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Nicole Cafarella, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: August 9, 2007.

Delores J. Barber,

Acting Leader Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: School Improvement Grants.

Abstract: Section 1003(g) of Title I authorizes funds to help SEAs and LEAs address the needs of schools in improvement, corrective action and restructuring in order to improve student achievement.

Additional Information: Since Congress has directed that these funds need to be distributed as soon as possible in order to begin helping schools that are identified as needing improvement, corrective action, or restructuring in order to improve student achievement. We are requesting OMB approval by August 17, 2007 in order for the States to have 30 days to create their application.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 1,560.

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 3441. 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 the Internet address *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. E7–15947 Filed 8–14–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program 2007 Annual Plan

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of Report Availability.

SUMMARY: The Office of Fossil Energy announces the availability of the *2007 Annual Plan* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program on the DOE Web site at *http://management.energy.gov/FOIA/1480.htm* or in print form (see "CONTACT" below). The *2007 Annual Plan* is in compliance with the *Energy Policy Act of 2005, Subtitle J, Section 999B(e)(3)*, which requires the publication of this plan and all written comments in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bill Hochheiser or Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Mail Stop FE–30, 1000 Independence Ave., SW., Washington, DC 20585 or phone: 202–586–5600 or e-mail to *UltraDeepwater@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary [excerpted from the 2007 Annual Plan p.4]

This document is the *2007 Annual Plan (Plan)* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program (Program) established pursuant to Subtitle J, Section 999, of the Energy Policy Act of 2005 (EPAct).

EPAct required the Department of Energy to competitively select and award a contract to a consortium which in turn is to administer three elements of the Program pursuant to an annual plan. A fourth program element of complementary research will be performed by the National Energy Technology Laboratory (NETL). NETL is also tasked with primary review and oversight of the Consortium.

As required by Section 999B(e)(2)(A), the Consortium provided its recommendations for the 2007 Annual Plan in the form of a "draft annual plan" (DAP). These recommendations were the basis for the 2007 Annual Plan which was presented to the Ultra-Deepwater Advisory Committee (UDAC) and the Unconventional Resources Technology Advisory Committee (URTAC) for review and comments. These comments were considered in the final development of the *2007 Annual*

Plan. In order to accommodate the Section 999 requirement to publish all written comments, the Consortium's DAP and the Advisory Committee reports are appended to the *2007 Annual Plan.* No other written comments were received.

As directed in Section 999, NETL solicited proposals, and in late 2006, competitively selected The Research Partnership to Secure Energy for America (RPSEA) as the Consortium. NETL worked closely with RPSEA in the development of its DAP, which frames their goals for the first two years of the program. RPSEA gathered extensive input through industry workshops, roadmapping sessions, and expert opinion to develop its first DAP, and identified the areas of highest priority for the investment of $50 million per year.

EPAct identifies three program elements to be administered by the Consortium: Ultra-deepwater architecture and technology, unconventional natural gas and other petroleum resources exploration and production technology, and technology challenges of small producers.

In the *2007 Annual Plan,* the Ultra-Deepwater Program Element is divided into theme areas based on four generic field types that represent the most challenging field development scenarios facing deepwater operators. The Consortium will solicit research and development (R&D) projects that seek to develop technologies that will facilitate development of these field types. Additionally, there are eight crosscutting challenges that represent the areas where new technologies are needed to advance the pace of ultra-deepwater development for all field types. The Consortium will also solicit projects that seek to advance technologies in each of these areas as components of an integrated system.

The Unconventional Natural Gas and Other Petroleum Resources Program Element is divided into three theme areas that target gas shales, water management for both coalbed methane and gas shales, and tight sands. The *2007 Annual Plan* focuses on unconventional natural gas rather than "other petroleum resources" (e.g., shale oil, oil sands, deep gas) where R&D to help convert resources into reserves is needed.

The Small Producers Program Element targets advancing technologies for mature fields, which primarily covers the technology challenges of managing water production, improving recovery, and reducing costs. Mature fields are the domain of small producers, and they face these three challenges on a daily basis.

For each of these program elements, a number of "sub-themes" have been developed to help guide the Consortium through their solicitation process. These sub-themes and the prioritization process are provided in greater detail in Sections 2.1, 2.2 and 2.3 of the *2007 Annual Plan.* The solicitation process that will be followed to generate the portfolio of R&D projects to address these themes is described in Section 2.4.

The NETL Complementary R&D Program Element has four principal areas of focus or "Centers":

- Drilling Under Extreme Conditions.
- Environmental Impacts of Oil and Natural Gas Development.
- Enhanced and Unconventional Oil Recovery.
- Resource Assessment.

A fifth area of activity will identify and quantify the benefits that are expected to accrue as a result of the annual $50 million funding level provided under Section 999H(a) of EPAct, and perform analyses in support of program planning.

Examples where the NETL R&D Program Element will complement the R&D administered by the Consortium include:

- Within both the Environmental Impacts of Oil and Gas Development and the Enhanced and Unconventional Oil Recovery Centers, there is a significant focus on oil shale and oil sands, resource areas that are not part of the program administered by the Consortium.
- The Center for Drilling Under Extreme Conditions will carry out fundamental research related to the performance of tools and equipment under extremely high pressures and temperatures, work that is related to development of the deep gas resource, which is not a target of the consortium program. Also, this work can support particular elements of the Ultra-Deepwater program.
- The Center for Resource Assessment will develop data and analytical products that will complement both the programs for small producers and the development of unconventional gas resources. These products, similar to those produced by DOE in the past and very popular within the industry, are not a focus area for the Consortium.

Continual communication between NETL and RPSEA will ensure that all program elements remain complementary and supportive, and that duplication of effort is avoided. Technology transfer for the entire program will be a continually evolving function. Because there are not yet any active projects, the focus of the *2007 Annual Plan* is to release solicitations and establish R&D projects. Technology transfer will be an integral part of the NETL Complementary program. It will also be part of each Consortium-administered award, as Section 999C(d) of EPAct mandates that each award recipient use 2.5% of their award for technology transfer. RPSEA and NETL have been working together to develop a technology transfer plan that provides a systematic approach for development of an integrated technology transfer program.

Section 999H(a) of EPAct provided that the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund will be funded at $50-million-per-year for 10 years, with funds generated from Federal lease royalties, rents, and bonuses paid by oil and gas companies. After allocations for program management by NETL and R&D administration by RPSEA, the amounts to be invested in R&D total $44.56 million ($32.06 million per year for Consortium R&D and $12.5 million per year for Complementary R&D).

The NETL Strategic Center for Natural Gas and Oil is responsible for overall program management. Complementary R&D will be carried out by NETL's Office of Research and Development. Planning and analysis related to the program, including benefits assessment and technology impacts analysis related to program direction, will be carried out by NETL's Office of Systems, Analysis, and Planning.

Dated: August 1, 2007.

James A. Slutz,

Deputy Assistant Secretary, Office Oil and Natural Gas.

[FR Doc. E7–15998 Filed 8–14–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1105–000, and ER07–1105–001]

Cedar Creek Wind Holdings, LLC; Notice of Issuance of Order

August 8, 2007.

Cedar Creek Wind Holdings, LLC (Cedar Creek) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Cedar

Creek also requested waivers of various Commission regulations. In particular, Cedar Creek requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cedar Creek.

On August 8, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Cedar Creek, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 7, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Cedar Creek is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Cedar Creek, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Cedar Creek's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15905 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 9, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–120–000.

Applicants: Sempra Energy Trading Corp.; Sempra Energy Solutions, LLC; The Royal Bank of Scottland plc.

Description: Joint application for authorization for disposition of jurisdictional facilities and request for expedited action.

Filed Date: 07/30/2007.

Accession Number: 20070802–0095.

Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: EC07–123–000.

Applicants: Chandler Wind Partners, LLC; Foote Creek II, LLC; Foote Creek IV, LLC; Foote Creek III, LLC; NEVADA SUN-Peak Limited Partnership; Ridge Crest Wind Partners, LLC; Caithness 251 Wind, LLC; Caithness VG Wind, LLC; Caithness Energy, LLC.; ArcLight Renewco Holdings, LLC.

Description: Chandler Wind Partners, LLC et al. submits an Application Under Section 203 of the Federal Power Act to Dispose of Jurisdictional Facilities.

Filed Date: 08/02/2007.

Accession Number: 20070807–0044.

Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–76–000.

Applicants: Logan Wind Energy, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Logan Wind Energy, LLC.

Filed Date: 08/06/2007.

Accession Number: 20070806–5028.

Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1385–030; ER01–3155–021; ER04–230–031; EL01–45–029.

Applicants: New York Independent System Operator, Inc.

Description: NYISO filing of eleventh quarterly combined cycle report.

Filed Date: 06/29/2007.

Accession Number: 20070629–5059.

Comment Date: 5 p.m. Eastern Time on Thursday, August 16, 2007.

Docket Numbers: ER05–6–100; EL04–135–103; EL02–111–120; EL03–212–116

Applicants: Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Ameren Services Company.

Description: PJM Interconnection, LLC & PJM Transmission Owners et al. submits a compliance filing, in compliance with FERC's 11/18/04 Order.

Filed Date: 08/01/2007.

Accession Number: 20070807–0046.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER06–311–005.

Applicants: New York Independent System Operator, Inc.; New York Transmission Owners.

Description: New York Independent System Operator, Inc. & the New York Transmission Owners submit an errata to the 7/30/07 filing.

Filed Date: 08/03/2007.

Accession Number: 20070806–0431.

Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–365–003.

Applicants: ISO New England, Inc. & New England Power Pool.

Description: ISO New England Inc. et al. submit Market Rule 1 revisions to provide a process for exports of capacity across import-constrained Capacity Zones over tie lines to external regions.

Filed Date: 08/06/2007.

Accession Number: 20070807–0120.

Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Docket Numbers: ER07–809–001.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation dba Progress Energy Florida, Inc. submits its response to FERC's 6/21/07 letter re an amended Interconnection Agreement with Seminole Electric Cooperative.

Filed Date: 08/02/2007.

Accession Number: 20070806–0177.

Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–870–001.

Applicants: Oncor Electric Delivery Company.

Description: Oncor Electric Delivery Company submits Rate Schedule 6 under its FERC Electric Tariff, Tenth Revised Volume 1, for transmission service to, from and over certain interconnections.

Filed Date: 08/03/2007.

Accession Number: 20070807–0043.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–964–001; ER98–1150–010.
Applicants: Tucson Electric Power Company; UNS Electric, Inc.
Description: Tucson Electric Power Company et al. submit amendments to their respective market-based rate tariffs in compliance with Order 697 pursuant to Section 205 of the Federal Power Act.
Filed Date: 08/02/2007.
Accession Number: 20070806–0178.
Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–1234–000.
Applicants: Upper Peninsula Power Company.
Description: Upper Peninsula Power Co. submits a Letter Agreement with the Escanaba Municipal Electric Utility memorializing the parties' understanding concerning its sale to Escanaba of capacity on an emergency basis.
Filed Date: 08/02/2007.
Accession Number: 20070806–0172.
Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–1235–000.
Applicants: New England Participating Transmission Owners.
Description: Participating Transmission Owners Administrative Committee on behalf of New England's Participating Transmission Owners submits proposed revisions to Schedule 21 under Section II.
Filed Date: 08/02/2007.
Accession Number: 20070806–0173.
Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–1236–000.
Applicants: Yuma Cogeneration Associates.
Description: Petition of Yuma Cogeneration Associates for order accepting market-based rate tariff for filing and granting waivers.
Filed Date: 08/02/2007.
Accession Number: 20070806–0174.
Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–1237–000.
Applicants: Up Power Marketing, LLC.
Description: UP Power Marketing LLC submits its Application under FPA 205 for order establishing rate schedule, and granting authorizations, blanket approval, and waivers.
Filed Date: 08/02/2007.
Accession Number: 20070806–0176.
Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–1238–000.
Applicants: E.ON U.S., LLC.
Description: E.ON US., LLC on behalf of Louisville Gas and Electric Company et al. submit an executed Letter Agreement with the Tennessee Valley Authority in its role as Reliability Coordinator.
Filed Date: 08/03/2007.
Accession Number: 20070806–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1239–000; ER07–1240–000.
Applicants: Tiverton Power, Inc.; Rumford Power, Inc.
Description: Tiverton Power Inc. et al. notifies FERC that the market-based rate application and accompanying tariffs submitted to the Commission on 5/24/07 should have reflected the name changes.
Filed Date: 08/03/2007.
Accession Number: 20070807–0125.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1241–000.
Applicants: Electric Transmission Texas, LLC.
Description: Electric Transmission Texas, LLC submits Original Tariff Sheets designated as Open Access Transmission Tariff, FERC Electric Tariff Volume 1.
Filed Date: 08/03/2007.
Accession Number: 20070807–0126.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1242–000.
Applicants: Public Service Company of Colorado; Cheyenne Light, Fuel and Power Company.
Description: Xcel Energy Services Inc. agent for Public Service Company of Colorado submits a Notice of Termination for the 12/19/03 Power Purchase Agreement FERC 95 with Cheyenne Light, Fuel and Power Company.
Filed Date: 08/03/2007.
Accession Number: 20070807–0127.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1243–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits a Notice of Termination of the 12/8/98 Power Purchase Agreement with the Town of Julesburg, CO designated as Electric Rate Schedule 46.
Filed Date: 08/03/2007.
Accession Number: 20070807–0128.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1244–000.
Applicants: New England Power Pool Participants Committee.
Description: New England Power Pool Participants Committee submits counterpart signature pages of the New England Pool Agreement dated as of 9/1/71.
Filed Date: 08/01/2007.
Accession Number: 20070807–0129.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER07–1245–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc et al jointly submit revised tariff sheets and supporting affidavit of Hung-Po Chao reflecting a proposed amendment to the ISO New England Information Policy.
Filed Date: 08/03/2007.
Accession Number: 20070807–0130.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1246–000.
Applicants: Harvest WindFarm, LLC.
Description: Harvest Windfarm LLC submits an application for market-based rate authority, certain waivers and blanket authorizations.
Filed Date: 08/03/2007.
Accession Number: 20070807–0131.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1247–000.
Applicants: FC Energy Services Company, LLC.
Description: FC Energy Services Company LLC submits its Original Sheet 1 et al to its FERC Electric Tariff 1.
Filed Date: 08/03/2007.
Accession Number: 20070807–0132.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1248–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool Inc proposes to revise portions of its Open Access Transmission Tariff.
Filed Date: 08/03/2007.
Accession Number: 20070807–0133.
Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1249–000.
Applicants: Lockport Energy Associates, L.P.
Description: Application of Lockport Energy Associates LP for Order Accepting Initial Tariff, Waivering Regulations and Granting Blanket Approvals pursuant to Section 205 of the FPA.
Filed Date: 08/06/2007.
Accession Number: 20070807–0134.
Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Docket Numbers: ER07–1250–000.
Applicants: PowerGrid Systems, Inc.

Description: PowerGrid Systems Inc submits a petition for acceptance of its FERC Electric Tariff, Original Volume 1.

Filed Date: 08/06/2007.

Accession Number: 20070807–0135.

Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Docket Numbers: ER07–1251–000.

Applicants: Northern Maine Independent System Administrator, Inc.

Description: Northern Maine Independent System Administration, Inc submits revisions to the NMISA FERC Electric Tariff, Original Volume 1.

Filed Date: 08/03/2007.

Accession Number: 20070807–0136.

Comment Date: 5 p.m. Eastern Time on Friday, August 24, 2007.

Docket Numbers: ER07–1252–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc acting as agent for Entergy Operating Companies submits unexecuted First Revised Transmission Service Agreement between Entergy & American Electric Power Service Corp.

Filed Date: 08/06/2007.

Accession Number: 20070807–0209.

Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Docket Numbers: ER07–1253–000.

Applicants: Delaware Municipal Electric Corporation.

Description: Delaware Municipal Electric Corporation, Inc submits FERC Electric Tariff, Original Volume 1 & supporting cost data.

Filed Date: 08/06/2007.

Accession Number: 20070807–0208.

Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Docket Numbers: ER07–1254–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits proposed revisions to Articles two & five & Appendices A & F of the agreement of transmission facilities owners.

Filed Date: 08/06/2007.

Accession Number: 20070807–0210.

Comment Date: 5p.m. Eastern Time on Monday, August 27, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–50–000.

Applicants: Monongahela Power Company.

Description: Monongahela Power Company submits application for authorization under Section 204(A) of the Federal Power Act to Issue Securities under ES07–50.

Filed Date: 07/27/2007.

Accession Number: 20070809–0138.

Comment Date: 5 p.m. Eastern Time on Friday, August 17, 2007.

Docket Numbers: ES07–55–000.

Applicants: Entergy Nuclear Palisades, LLC.

Description: Application Requesting Rescission of Certain Section 204 Authorization and Request for Blanket Authorization Under Part 34 for Entergy Nuclear Palisades, LLC.

Filed Date: 08/02/2007.

Accession Number: 20070802–5055.

Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–80–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits supplements to their 7/13/07 filing and submits pro forma Second Revised Sheet 137 and 140 of the Open Access Transmission Tariff.

Filed Date: 08/01/2007.

Accession Number: 20070802–0023.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1–010.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to June 7, 2007 Order.

Filed Date: 08/06/2007.

Accession Number: 20070806–5027.

Comment Date: 5 p.m. Eastern Time on Monday, August 27, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Secretary.

[FR Doc. E7–15990 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 82–000]

Alabama Power Company; Notice of Authorization for Continued Project Operation

August 8, 2007.

On July 28, 2005, Alabama Power Company, licensee for the Mitchell Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Mitchell Project is located on the Coosa River in the state of Alabama.

The license for Project No. 82 was issued for a period ending July 31, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior

license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 82 is issued to Alabama Power Company, for a period effective August 1, 2007 through July 31, 2008, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2008, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Alabama Power Company is authorized to continue operation of the Mitchell Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15904 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101–000]

Sacramento Municipal Utility District; Notice of Authorization for Continued Project Operation

August 8, 2007.

On July 15, 2005, Sacramento Municipal Utility District, licensee for the Upper American River Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. The Upper American River Hydroelectric Project is located on the Rubicon River, Silver Creek, and South Fork of the American River near Placerville, California.

The license for Project No. 2101–000 was issued for a period ending July 31, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2101 is issued to Sacramento Municipal Utility District, for a period effective August 1, 2007 through July 31, 2008, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2008, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Sacramento Municipal Utility District, is authorized to continue operation of the Upper American River Hydroelectric Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15906 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–000]

Alabama Power Company; Notice of Authorization for Continued Project Operation

August 8, 2007.

On July 28, 2005, Alabama Power Company, licensee for the Coosa River Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. The Coosa River Project is located on the Coosa River in the states of Alabama and Georgia.

The license for Project No. 2146 was issued for a period ending July 31, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2146 is issued to Alabama Power Company, for a period effective August 1, 2007 through July 31, 2008, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2008, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission

orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Alabama Power Company is authorized to continue operation of the Coosa River Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15907 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2155–000]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

August 8, 2007.

On July 15, 2005, Pacific Gas and Electric Company, licensee for the Chili Bar Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. The Chili Bar Project is located on the South Fork American River in El Dorado, near Placerville, California.

The license for Project No. 2155 was issued for a period ending July 31, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2155 is issued to Pacific Gas and Electric Company, for a period effective August 1, 2007 through July 31, 2008, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2008, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Chili Bar Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15908 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2545–000]

Avista Corporation; Notice of Authorization for Continued Project Operation

August 8, 2007.

The Spokane River Hydroelectric Project, P–2545, as currently licensed, consists of five developments: Upper Falls, Monroe Street, Nine Mile, Long Lake and Post Falls. On July 28, 2005, Avista Corporation, licensee for the Spokane River Hydroelectric Project, filed two applications for new or subsequent licenses pursuant to the Federal Power Act (FPA) and the Commission's regulations. One application, docketed P–2545, is for the Upper Falls, Monroe Street, Nine Mile, Long Lake project developments. The other application, docketed P–12606, is for the Post Falls development only. The Post Falls development is located on the Spokane River in the counties of Kootenai and Benewah, Idaho. The Spokane River Hydroelectric Project Developments are located on the Spokane River in Spokane, Steven, and Lincoln County, Washington.

The license for Project No. 2545 was issued for a period ending July 31, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2545 (Upper Falls, Monroe Street, Nine Mile, Long Lake and Post Falls) is issued to Avista Corporation, for a period effective August 1, 2007 through July 31, 2008, or until the issuance of a new license(s) for the project(s) or other disposition under the FPA, whichever comes first. If issuance of a new license(s) (or other disposition) does not take place on or before July 31, 2008, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Avista Corporation, is authorized to continue operation of the Spokane River Hydroelectric Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15909 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 618]

Alabama Power Company; Notice of Authorization for Continued Project Operation

August 8, 2007.

On July 28, 2005, Alabama Power Company, licensee for the Jordan Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. The Jordan Project is located on the Coosa River in the state of Alabama.

The license for Project No. 618 was issued for a period ending July 31, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 618 is issued to Alabama Power Company, for a period effective August 1, 2007 through July 31, 2008, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2008, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Alabama Power Company is authorized to continue operation of the Jordan Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15910 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2569–005, ER98–4652–005, ER02–1175–004, and ER01–2568–003]

Boralex Livemore Falls LP, Boralex Stratton Energy LP, Boralex Ft. Fairfield LP, Boralex Ashland LP; Notice of Technical Conference

August 8, 2007.

Take notice that a technical conference will be held in the above-referenced proceedings on Wednesday, August 29, 2007 from 9 a.m. to 1 p.m. (EST) in the Room 10A–07, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The conference will address issues raised with regard to Boralex's updated market power analysis.

The conference is open to all interested parties and interested persons.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For further information please contact Marek Smigielski at (202) 502–6818 or e-mail *marek.smigielski@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15911 Filed 8–14–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0597; FRL–8141–6]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Syngenta Seeds, Monsanto Company, Pioneer Hi-Bred International (A Dupont Company), and Mycogen Seeds (c/o Dow AgroSciences), to conditionally register the pesticide products Agrisure™ RW Rootworm-Protected Corn, MON 88017, MON 88017 x MON 810, Herculex Rootworm Insect Protection, and Herculex RW Insect Protection, containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0597. Publicly available docket materials are available either in the electronic docket at *http://*

www.regulations.gov, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

Electronic versions of the fact sheets and Biopesticide Regulatory Action Documents are available at *http://www.epa.gov/oppbppd1/biopesticides/pips/pip_list.htm*.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **"Federal Register"** listings at *http://www.epa.gov/fedrgstr*.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in event MIR604 corn SYN-IR604-8, Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production (Vector ZMIR39) in Event MON 88017 corn (OECD Unique Identifier: MON-88O17-3), and Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (plasmid insert PHP 17662) in Event DAS-59122-7 corn, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in event MIR604 corn SYN-IR604-8, Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production (Vector ZMIR39) in Event MON 88017 corn (OECD Unique Identifier: MON-88O17-3), and Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (plasmid insert PHP 17662) in Event DAS-59122-7 corn during the period of conditional registrations will not cause any unreasonable adverse effect on the environment, and that use of the pesticides are, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditional Approval Form

EPA issued a notice, published in the **Federal Register** of October 27, 2004 (69 FR 62678) (FRL–7370–4), which announced that Syngenta Seeds, Inc., Field Crops-NAFTA, P.O. Box 12257, 3054 Cornwallis Rd., Research Triangle Park, NC 27709-2257, had submitted an application to conditionally register the pesticide product, Event MIR604 Rootworm-Protected Corn, Plant-Incorporated Protectant (EPA File Symbol 67979-L), containing Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in event MIR604 corn SYN-IR604-8 an active ingredient not included in any previously registered product. The application was approved on October 3, 2006, as Agrisure™ RW Rootworm Protected Corn, (EPA Registration Number 67979-5). This product is a plant-incorporated protectant.

EPA also issued a notice, published in the **Federal Register** of December 22, 2004 (69 FR 76716) (FRL–7370–5), which announced that Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167, had submitted an application to conditionally register the pesticide products, MON 88017 and MON 88017 x MON 810, Plant-Incorporated Protectant EPA File Symbols 524-LLR and 524-LLE), containing [Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production (Vector ZMIR39) in Event MON 88017 corn (OECD Unique Identifier: MON-88O17-3) an active ingredient not included in any previously registered product.The applications were approved on December 13, 2005, as MON 88017, (EPA Registration Number 524-551) and MON 88017 x MON 810, (EPA Registration Number 524-552). These products are plant-incorporated protectants.

EPA also issued a notice, published in the **Federal Register** of September 1, 2004 (69 FR 53434) (FRL–7370–2), which announced that Pioneer Hi-Bred International, A Dupont Company, 7250 N.W. 62nd Ave., P.O. Box 552, Johnston, IA 50131-0552 and Mycogen Seeds c/o Dow AgroSciences , had submitted an application to conditionally register the pesticide products, Pioneer Brand B.t. Cry34/35Ab1 Insect Resistant Corn Seed and Mycogen Brand B.t. Cry34/35Ab1 Construct 17662 Corn, Plant-Incorporated Protectants (EPA File Symbols 29964-U and 68467-L), containing Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (plasmid insert PHP 17662) in Event DAS-59122-7 corn an active ingredient not included in any previously registered product.The applications were approved on August 31, 2005 , as Herculex Rootworm Insect Protection, (EPA Registration Number 29964-4) and Herculex RW Insect Protection, (EPA Registration Number 68467-5). These products are plant-incorporated protectants.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 2, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–16049 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8454–9]

Proposed CERCLA Administrative Cost Recovery Settlement; THORCO, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the THORCO Transformer Time-Critical Removal Site in Coeur d'Alene, Idaho with the following settling party: THORCO, Incorporated (THORCO). The settlement requires the settling party to pay $18,000.00 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before September 14, 2007.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ORC–158, Seattle, Washington 98101; (206) 553–0242. Comments should reference the THORCO Transformer Time-Critical Removal Site in Coeur d'Alene, Idaho, EPA Docket No. CERCLA–10–2007–0159, and should be addressed to Robert E. Hartman, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Robert E. Hartman, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101; (206) 553–0029.

SUPPLEMENTARY INFORMATION: The THORCO Transformer Time-Critical Removal Site is located at 4965 Industrial Avenue, Coeur d'Alene, Idaho (Site). THORCO operated as an electrical construction company. THORCO obtained six transformers during the course of work from various construction sites. Transformer oil was released to the environment on THORCO's property. The release was initially reported on March 21, 2003.

On March 26, 2003, EPA mobilized to conduct a Removal Site Evaluation at the Site. Based on the Removal Site Evaluation and sampling analysis, EPA concluded that a release of PCBs occurred at the Site. The presence of PCBs presented a threat to human health and the environment. In May 2003, EPA and THORCO entered into an Administrative Order on Consent (AOC) for Removal Action that required THORCO to perform a cleanup of the Site. The removal was completed in June of 2003. The AOC did not address EPA's past response costs predating the AOC.

This settlement requires THORCO to pay $18,000.00 to the Hazardous Substance Superfund for recovery of past response costs incurred by EPA concerning the THORCO Transformer Time-Critical Removal Site, which total approximately $38,767.00. THORCO provided requested information, promptly granted access to investigating agencies both state and federal, worked cooperatively with EPA to execute the AOC, and timely completed the removal action in accordance with EPA's guidance and standards.

Dated: August 4, 2007.

Elin D. Miller,

Regional Administrator. Region 10.

[FR Doc. E7–16027 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8454–8]

Proposed CERCLA Administrative Agreement for the Recovery of Past Response Costs Incurred at the Weld County Waste Disposal Site Near Ft. Lupton, in Weld County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), concerning the Weld County Waste Disposal Site located at 4982 Weld County Road 35, approximately 4½ miles east of Ft. Lupton, in Weld County, Colorado. This settlement, embodied in a CERCLA section 122(h) Agreement for Recovery of Past Response Costs ("Agreement"), is designed to resolve CBS Corporation's liability at the Site for past work and past response costs through covenants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed Agreement requires CBS Corporation to pay a total of $178,118.15.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received, and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA Region 8's Central Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before September 14, 2007.

ADDRESSES: The proposed Agreement and additional background information relating to the settlement are available for public inspection at EPA Region 8's Central Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to Carol Pokorny (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the CBS Settlement for the Weld County Waste Disposal Site, in Weld County, Colorado and the EPA docket number, CERCLA–08–2007–0011.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Regarding the proposed administrative settlement under section 122(h)(1) of CERCLA, 42

U.S.C. 9622(h)(1): In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Agreement have been agreed to by CBS Corporation and EPA. By the terms of the proposed Agreement, CBS Corporation will pay a total of $178,118.15 to the Hazardous Substance Superfund. This payment represents approximately 3.292% of the $5,410,636.40 in past response costs incurred by EPA for response actions conducted at the Site through September 30, 2006. CBS Corporation's predecessor (Wyoming Mineral Corporation) manifested 51,122.50 gallons of hazardous substances to the Site. This amount represents approximately 3.292% of the 1,552,849.32 gallons of hazardous substances manifested to the Site by all generators. The amount that CBS Corporation will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. To be eligible for the settlement, CBS Corporation must have submitted a response to EPA's Request for Information.

It is so agreed:

Dated: July 31, 2007.

Michael T. Risner,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region 8.

[FR Doc. E7–16047 Filed 8–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 20, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 14, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0984.

Title: Sections 90.35(b)(2), Industrial/Business Pool and 90.175(b)(1), Frequency Coordinator Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, local or tribal government.

Number of Respondents: 6,949 respondents; 6,949 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: One time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 6,949 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to OMB as an extension during this comment period to obtain the full three-year clearance from them. The Commission has adjusted the total annual burden hours due to an increase in the number of respondents.

Sections 90.35 and 90.175 require third party disclosure requirements by applicants proposing to operate a land mobile radio station. If they have service contours that overlap an existing land mobile station, they are required to obtain written concurrence of the frequency coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station.

The Commission needs this requirement to evaluate the applicant's need for such frequencies and to minimize the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15703 Filed 8–14–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 10, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 14, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167, and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jerry Cowden via e-mail at *PRA@fcc.gov* or at 202–418–0447. If you would like to obtain or view a copy of this information collection you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* None.

Title: Consummations of Assignments and Transfers of Control of Authorization.

Form Nos.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 589 respondents; 589 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 589 hours.

Total Annual Cost: $118,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission does not provide assurances of confidentiality to entities submitting their filings and applications. However, entities may request confidential treatment of their applications and filings under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Federal Communications Commission is requesting that the Office of Management and Budget (OMB) approve the establishment of a new collection for consummation of assignments and transfers of control of station authorization. A consummation is a party's notification to the Commission that a transaction (assignment or transfer of control of station authorization) has been completed within a designated period of time. A consummation is applicable to all international telecommunications services, including International High Frequency (IHF), Section 214 Applications (ITC), Satellite Space Stations (SAT), Submarine Cable Landing Licenses (SCL) and Satellite Earth Station (SES) stations. Currently, applicants send multiple letters to various offices within the Commission for each file number and call sign that are part of the consummation. The new, proposed consummation module will eliminate the applicant's requirement to notify the Commission by letter with the details of the consummation. With this new collection the applicant will complete an on-line form (consummation module) in the Commission's electronic International Bureau Filing System ("IBFS"). After the applicant enters the FCC Registration Number (FRN) in the form, the system will generate a list of file numbers and call signs that are related to the FRN. The applicant can select the file numbers and call signs that are part of the consummation. The consummation module: (1) Saves time for the applicants and the Commission staff because the information is readily accessible for viewing and processing 24 hours a day/7 days a week, (2) eliminates the applicants completion by paper and mailing of letters, and (3) expedites the Commission staff's receipt of consummations in a timely manner. Without this collection of information, the Commission would not have critical information such as a change in a controlling interest in the ownership of the licensee. Furthermore, the Commission would not have the authority to review assignments and transfers of control of satellite licenses to determine whether the initial license was obtained in good faith with the intent to construct a satellite system.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–16005 Filed 8–14–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Requirement(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 9, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 15, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0466.

Title: Station Identification Sections 73.1201, 74.783 and 74.1283.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local and Tribal Government.

Number of Respondents: 4,200.

Estimated Time per Response: 10 minutes to 2 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Total Annual Burden: 6,566 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On May 31, 2007, the Commission released the Second Report and Order, Digital Audio Broadcasting (DAB) Systems and Their Impact on the Terrestrial Radio Broadcast Service ("Second Order"), FCC 07–33, MM Docket 99–325. Provisions of the Second Order require station identification requirements for Digital Audio Broadcasting (DAB) stations to facilitate public participation in the regulatory process. Both AM and FM stations with DAB operations will be required to make station identification announcements at the beginning and end of each time of operation, as well as hourly, for each programming stream.

47 CFR 73.1201(a) requires television broadcast licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

47 CFR 73.1201(b)(1) requires that official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; Provided that the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. DTV stations, or DAB stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a DTV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

47 CFR 74.783(e) permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. LPTV respondents are required to use the on-line electronic system. To enable these respondents to use this on-line system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed.

47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or service representative to be contacted in the event of malfunction of the translator. 47 CFR 74.1283(c)(1) requires FM translator stations whose station identification is made by the primary station to furnish current information on the translator's call letters and location. This information is kept in the primary station's files. This information is used to contact the translator licensee in the event of malfunction of the translator.

OMB Control Number: 3060–1034.

Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service Broadcast Station Annual Employment Report.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 710.

Estimated Time per Response: 2.0 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,420 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On May 31, 2007, the Commission released the Second Report and Order, Digital Audio Broadcasting (DAB) Systems and Their Impact on the Terrestrial Radio Broadcast Service ("Second Order"), FCC 07–33, MM Docket 99–325. Provisions of the Second Order require radio station licensees to provide information necessary for the implementation of interim hybrid digital operations. Implementation of hybrid digital operations is entirely voluntary.

47 CFR 73.404(b) states in situations where interference to other stations is anticipated or actually occurs, AM licensees may, upon notification to the Commission, reduce the power of the primary DAB sidebands by up to 6 dB. Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

47 CFR 73.404(e) states licensees which include commercial and noncommercial AM and FM radio stations must provide notification to the Commission in Washington, DC, within 10 days of commencing IBOC digital operation. The notification must include the following information:

(1) Call sign and facility identification number of the station;

(2) date on which in-band, on channel (IBOC) operation commenced;

(3) certification that the IBOC DAB facilities conform to permissible hybrid specifications;

(4) name and telephone number of a technical representative the Commission can call in the event of interference;

(5) certification that the analog effective radiated power remains as authorized;

(6) transmitter power output; if separate analog and digital transmitters are used, the power output for each transmitter;

(7) if applicable, any reduction in an AM station's primary digital carriers;

(8) if applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna;

(9) if applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in 73.317;

(10) a certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in 1.1310 of the Commission's rules and is therefore categorically excluded from environmental processing pursuant to 1.1306(b). Any station that cannot certify compliance must submit an environmental assessment ("EA")

pursuant to 1.1311 and may not commence IBOC operation until such EA is ruled upon by the Commission.

Implementation of the notification will eliminate both the need for the FCC staff to issue a Special Temporary Authority (STA) to the broadcaster and for the broadcaster to file and pay the initial and any subsequent filing fees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–16006 Filed 8–14–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2825]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 9, 2007.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by August 30, 2007. See Section 1.429(f) of the Commission's Rules. Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired. See Section 1.429(g) of the Commission's Rules.

Subject: In the Matter of Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community License in the Radio Broadcast Services (MB Docket No. 05–210).

Number of Petitions Filed: 10.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–16065 Filed 8–14–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 012009.

Title: APL/MOL Indian Sub-Continent/U.S. East Coast Via Suez Slot Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; and Mitsui O.S.K. Lines, Ltd. ("MOL")

Filing Party: Eric C. Jeffrey, Esq.; Goodwin Proctor LLP; 901 New York Avenue, NW.; Washington, DC 20001.

Synopsis: The agreement authorizes American President Lines, Ltd. and APL Co. PTE Ltd. to charter space to MOL in the trade between U.S. East Coast ports and ports in the Indian subcontinent, South East Asia, the Middle East, the Mediterranean, and Portugal.

Agreement No.: 012010.

Title: MSC/K-Line Space Charter Agreement.

Parties: Mediterranean Shipping Co. S.A. ("MSC") and Kawasaki Kisen Kaisha Ltd. ("K-Line")

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes MSC to charter space to K-Line in the trade between the U.S. Atlantic Coast and ports in Italy and Spain.

Agreement No.: 012011.

Title: MSC/YML Space Charter Agreement.

Parties: Mediterranean Shipping Co. S.A. ("MSC") and YangMing (UK) Ltd. ("YangMing").

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes MSC to charter space to YangMing in the trade between the U.S. Atlantic Coast and ports in Italy and Spain.

By Order of the Federal Maritime Commission.

Dated: August 10, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–15993 Filed 8–14–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License no.	Name/address	Date reissued
019355NF	Abad Air, Inc., 10411 N.W. 28th Street, Suite C–101, Doral, FL 33172	June 28, 2007.
004027F	U.S. Airfreight, Inc., 2624 Northwest 112th Avenue, Doral, FL 33172	July 15, 2007.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–15994 Filed 8–14–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Atlantida International Inc., 5911 Shirley Lane, Humble, TX 77396, Officer: Marco T. Fuentes, President (Qualifying Individual).

Accord Relocations, 67 Lockheed Avenue, Las Vegas, NV 89183, Officer: Tiffany-Michele Nakano, President (Qualifying Individual).

Transportes Zuleta Express, Inc., 3531 North Andrews Avenue, Fort Lauderdale, FL 33309, Officers:

Cecilia Maritza Canela, Secretary (Qualifying Individual), Milton A. Valle, President.

Green Line Global International Corporation, 12610 Yukon Avenue, Hawthorne, CA 90250, Officers: Lupe A. Hernandez, Chairman (Qualifying Individual), Batista Hernandez, Vice President.

All West Coast Shipping Inc., 1849 Silkwood Lane, San Jose, CA 95131, Officers: Maria Ayr, Vice President (Qualifying Individual), Andrey Naumov, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

ES Express Cargo & Multiservices, Inc., dba ES Express Cargo EL Salvador Express Cargo, 1325 NW. 93 Ct. B–112, Miami, FL 33172, Officer: Edward F. Bonilla, Export Manager (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

TLC Shipping And Delivery, Inc., 957 Utica Avenue, Store #1, Brooklyn, NY 11203, Officer: Trevor A. Deane, President (Qualifying Individual).

GSN Worldwide Logistics LLC, 1 Reler Lane, 1A, Somerset, NJ 08873, Officer: Rajiv Jaidka, President (Qualifying Individual).

Dated: August 10, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–15992 Filed 8–14–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 003847F.
Name: B.C. International Trading, Inc.
Address: 998 Arthur Kill Rd., Staten Island, NY 10312.
Date Revoked: July 27, 2007.
Reason: Failed to maintain a valid bond.

License Number: 017958F.
Name: DLM Ventures, Inc.
Address: 1850 NW. 84th Ave., Miami, FL 33126.
Date Revoked: July 26, 2007.
Reason: Surrendered license voluntarily.

License Number: 020265N.
Name: Im-Ex Global, Inc.
Address: 3901 Coyote Circle, Clayton, CA 94517.
Date Revoked: July 28, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018316N.
Name: Speedway Freight Services, Inc.
Address: 167–43 148th Ave., 2nd Fl., Jamaica, NY 11434.
Date Revoked: July 27, 2007.
Reason: Failed to maintain a valid bond.

License Number: 020025NF.
Name: Valdan Group, L.L.C.
Address: 1629 World Trade Center Loop, Laredo, TX 78045.
Date Revoked: July 25, 2007.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–15997 Filed 8–14–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Orders of Revocation

Notice is hereby given that the Orders revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number: 017378NF.
Name: E.M.W. Freight Forwarding Corp.
Address: 10300 Northwest 19th Street, Miami, FL 33172.
Order Published: FR: 08/01/07 (Volume 72, No. 147 Pg. 42090).

License Number: 019643NF.
Name: Sigma Logistics, Inc.
Address: 1100 S. El Molino Ave., Pasadena, CA 91106.
Order Published: FR: 08/01/07 (Volume 72, No. 147 Pg. 42091).

License Number: 015605N.
Name: Solid Trans Inc.
Address: 1401 S. Santa Fe Ave., Compton, CA 90221.
Order Published: FR: 08/01/07 (Volume 72, No. 147 Pg. 42091).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–15995 Filed 8–14–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 September 7, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. American State Bancshares, Inc., Great Bend, Kansas; to acquire 100 percent of the voting shares of Intra Financial Corp, Concordia, Kansas, and thereby indirectly acquire Peoples Exchange Bank, Belleville, Kansas.

Board of Governors of the Federal Reserve System, August 10, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–16000 Filed 8–14–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Capital Corp of the West, Merced, California; to acquire Bay View Funding, San Mateo, California, and thereby engage in factoring and accounts receivable, pursuant to section, 225.28(b)(1) and (b)(2)(vi) of Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15999 Filed 8–14–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 071 0168]

Jarden Corporation and K2 Incorporated; 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 September 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Jarden/K2, File No. 071 0168," 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, NW, 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 e-mail messages directed to the following e-mail 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*.

[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).

FOR FURTHER INFORMATION CONTACT: Brendan J. McNamara (202) 326-3703, Bureau of Competition, Room NJ–5108, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

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 August 9, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/08/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., 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

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Jarden Corporation ("Jarden") and K2 Incorporated ("K2"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise be likely to result from Jarden's acquisition of K2. Under the terms of the proposed Consent Agreement, Jarden and K2 are required

to divest assets related to K2's Cajun Line®, Omniflex®, Outcast®, and Supreme™ monofilament fishing line products. The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty 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 or make it final.

Pursuant to an Agreement and Plan of Merger dated April 24, 2007, Jarden proposes to acquire K2 in a transaction valued at approximately $1.2 billion ("Proposed Acquisition"). 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 market for monofilament fishing line in the United States. The proposed Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in this market as a result of the Proposed Acquisition.

II. The Parties

Jarden is a leading provider of branded consumer products, including outdoor sporting goods, kitchen appliances, firelogs, playing cards, and a wide variety of consumer and medical plastic products. In 2006, Jarden's revenues were approximately $3.85 billion. In April 2007, Jarden acquired Pure Fishing Inc. ("Pure Fishing"), a fishing tackle company that sells products under several brands, including Abu Garcia®, Berkley®, Stren®, Mitchell®, and Spider®.

K2 is a leading provider of branded consumer outdoor sports equipment. K2 reported annual sales of $1.4 billion in 2006, attributable to four primary business segments: Marine and Outdoor, Team Sports, Action Sports, and Apparel and Footwear. K2 participates in the fishing tackle markets through its Shakespeare division, marketing products under several brand names including Shakespeare®, Ugly Stik®, Penn®, Pflueger®, and Cajun Line®.

III. Monofilament Fishing Line

Monofilament fishing line is the most widely-used and least expensive type of fishing line. While other specialized types of fishing line, including braided (or super line) and fluorocarbon, appear to be growing in popularity, especially among avid anglers, the vast majority of fishing line purchases in the United States are of monofilament line. Monofilament line is acceptable for a broad range of fishing conditions, but is particularly well-suited for situations in which it is important for the fishing line to be flexible and stretch. Due to its low cost and ease of use, monofilament line is popular with both novices and more avid anglers. The evidence indicates that anglers, if faced with a five to ten percent increase in the price of monofilament line, would not switch to braided line or fluorocarbon line. Therefore, monofilament line is the relevant product market in which to analyze the competitive effects of the proposed acquisition.

The relevant geographic market in which to assess the impact of the Proposed Acquisition is the United States. Although monofilament line appears to be routinely sourced by U.S. sellers from contract manufacturers worldwide, no foreign firm is a significant seller in the U.S. and, in light of the entry conditions discussed below, none is likely to become significant within two years.

The market for monofilament fishing line is highly concentrated, with Pure Fishing's three brands, Berkley®, Stren®, and Spider®, dominating the market. Although Shakespeare has a smaller presence in the market than Pure Fishing, Shakespeare appears to be the second- largest firm in the monofilament fishing line market and Pure Fishing's most significant competitor, due, in part, to the recent success of its Cajun Line, a red monofilament that is growing in popularity.

Entry into the market for monofilament fishing line that would be sufficient to deter or counteract the anticipated competitive effects of the proposed transaction is unlikely to occur in the next two to three years. Although obtaining a source of supply for monofilament line does not constitute a significant barrier to entry, the need to develop brand equity, distribution, infrastructure, and a marketing presence for the brand poses a significant barrier to *de novo* entry and to entry by participants in adjacent markets. The relatively limited sales opportunities in the monofilament fishing line market make it unlikely that a new entrant could justify the investment required to develop and market a new fishing line brand.

The Proposed Acquisition raises significant competitive concerns in the U.S. market for monofilament fishing line. Pure Fishing's sales account for a substantial share of the monofilament market. Shakespeare is Pure Fishing's most significant competitor. Consumers have benefitted from competition between Shakespeare and Pure Fishing on pricing, promotional spending, and product innovations. Thus, unremedied, the Proposed Acquisition likely would cause anticompetitive harm by enabling Jarden to profit by raising the prices of its monofilament fishing line unilaterally, as well as reducing its incentives to innovate and develop new monofilament fishing line products.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's likely anticompetitive effects in the market for monofilament fishing line. The proposed Consent Agreement preserves competition by requiring the divestiture of Cajun Line®, Omniflex®, Outcast®, and Supreme™ (the "Divested Assets") to W.C. Bradley/ Zebco ("Zebco") within fifteen (15) days after the Proposed Acquisition is consummated.

Shakespeare's Penn® monofilament fishing line was not included in the divested assets because the evidence revealed that this is a rapidly declining brand and did not represent any competitive constraint to Pure Fishing's fishing line brands. Furthermore, Penn is best known for its high-end fishing reels, and as a result, any remedy involving this brand would unnecessarily present complex brand splitting concerns.

The Commission is satisfied that Zebco is a well-qualified acquirer of the divested assets. Zebco is a significant market participant in the fishing tackle market with a variety products, including fishing rods, fishing reels, and fishing rod and reel combination kits. Zebco already has a strong distribution network and knowledgeable sales force with existing relationships with fishing tackle retailers.

The proposed Consent Agreement contains several provisions designed to ensure the success of the divested assets to Zebco by requiring that (1) Jarden and K2 take steps to ensure that confidential information relating to the divested assets will not be used by Jarden; (2) Zebco will have the opportunity to enter into employment contracts with certain key individuals who have experience relating to the divested assets; and (3) certain management employees of K2 who were substantially involved in the research, development, or marketing of the divested assets be precluded from working on competitive fishing line products at Jarden for a period of two years.

The Order to Maintain Assets that is included in the proposed Consent Agreement requires that Jarden and K2 protect the viability, marketability, and competitiveness of the divestiture assets between the time the Commission accepts the proposed Consent Agreement for placement on the public record and when the divestitures take place.

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 Decision and Order or to modify its terms in any way.

By direction of the Commission.

Richard C. Donohue

Acting Secretary

[FR Doc. E7–16060 Filed 8–14–07: 8:45 am]

BILLING CODE 6750–01–S

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: "Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality" 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 October 15, 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

"Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality."

AHRQ plans to employ the latest techniques to improve its current data collections by developing new surveys, or information collection tools and methods, and by revising existing collections in anticipation of, or in response to, changes in the healthcare field, for a three-year period. The clearance request is limited to research on in formation collection tools and methods, and related reports and does not extend to the collection of data for public release or policy formation."

A generic clearance for this work allows AHRQ to draft and test information collection tools and methods more quickly and with greater lead time, thereby managing project time more efficiently and improving the quality of the methodological data the agency collects.

In some instances the ability to pretest/pilot-test information collection surveys, tools and methods, in anticipation of work, or early in a project, may request in the decision not to proceed with particular survey activities. This would save both public and private resources and effectively eliminate or reduce respondent burden.

Many of the tools AHRQ develops are made available to users in the private sector. The healthcare environment changes rapidly and inquires a quick response from the agency to provide appropriately refined tools. A generic clearance for this methodological work will facilitate the agency's timely development of information collection tools and methods suitable for use in changing conditions.

It is particularly important to refine AHRQ's tools because they have a widespread impact. These tools are frequently made available to help the private sector to improve health care quality by enabling the gathering of useful data for analysis. They are also used to provide information about health care quality to consumers and purchasers so that they can make marketplace choices to influence and improve health care quality. The current clearance will expire January 31, 2008. This is a request for a generic approval from OMB to test information collection instruments and methods over the next three years.

Methods of Collection

Participation in the testing of information collection tools and methods will be fully voluntary and non-participation will have no effect on eligibility for, or receipt of, future AHRQ health services research support or on future opportunities to participate in research or to obtain informative research results. Specific estimation procedures, when used, will be described when we notify OMB as to actual studies conducted under the clearance.

Estimated Annual Respondent Burden

Type of research activity	Number of respondents	Estimated time per respondent (minutes)	Total burden hours
Face-to-Face Interviews	100	60	100
Field Tests (short)	2,400	20	800
Field Tests (long)	7,600	30	3,800
Lab Experiments	200	90	300
Focus Groups	100	60	100
Cognitive Interviews	100	60	100
Totals	10,500	Not Applicable	5,200

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

Expenses (equipment, overhead, printing, and support staff) will be incurred by AHRQ components as part of their normal operating budgets. No additional cost to the Federal Government is anticipated. Any deviation from these limits will be noted in reports made to OMB with respect to a particular study or studies conducted under the clearance.

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: August 7, 2007

Carolyn M. Clancy,

Director.

[FR Doc. 07–3991 Filed 8–14–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Supplemental Form to the Financial Status Report for all AoA Title III Grantees

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 14, 2007.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 to the OMB Desk Officer for AoA, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: *Stephen.Daniels@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The Supplemental form to the Financial Status Report for all AoA Title III Grantees provides an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issued by Administration on Aging (AoA). This information will be used for Federal oversight of Title III Projects. AoA estimates the burden of this collection of information as follows: 56 State Agencies on Aging respond semiannually which should be an average burden of 1 hour per State agency per submission.

Dated: August 9, 2007.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E7–15958 Filed 8–14–07; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–07AG]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National HIV Behavioral Surveillance System (NHBS)—New— National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors related to Human Immunodeficiency Virus (HIV) infection among persons at high risk for infection in the United States. The primary objectives of the system are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community based organizations, community planning groups and other stakeholders. This project addresses the goals of CDC's HIV prevention strategic plan, specifically the goal of strengthening the national capacity to monitor the HIV epidemic to better direct and evaluate prevention efforts.

Data are collected through in-person interviews conducted with persons systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States; these 25 MSAs were chosen based on having high AIDS prevalence. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), injecting drug users (IDU), and heterosexual persons living in census tracts that have high HIV/AIDS prevalence (HET). A brief screening interview will be used to determine eligibility for participation in the full survey. The data from the full survey will provide estimates of behavior related to the risk of HIV and other sexually transmitted diseases, prior testing for HIV, and use of HIV prevention services. All persons interviewed will also be offered an HIV test. No other federal agency systematically collects this type of information from persons at risk for HIV infection. This data will have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that NHBS will involve, per year in each of the 25 MSAs, eligibility screening for 50 to 200 persons and eligibility screening plus the survey with 500 eligible respondents, resulting in a total of 37,500 eligible survey respondents and

7,500 ineligible screened persons during a 3-year period. Data collection will rotate such that interviews will be conducted among one group per year: MSM in year 1, IDU in year 2, and HET in year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group. Participation of respondents is voluntary and there is no cost to the respondents other than their time. The total estimated annualized burden hours is 9,931.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NHBS–MSM			
Screener	17,500	1	5/60
Survey	12,500	1	30/60
NHBS–IDU			
Screener	13,750	1	5/60
Survey	12,500	1	55/60
NHBS–HET			
Screener	13,750	1	5/60
Survey	12,500	1	40/60

Dated: August 9, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–15983 Filed 8–14–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities; Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), Administration for Children and Families, HHS.

ACTION: Notice of quarterly meeting.

DATES: Thursday, September 6, 2007, from 9 a.m.–5 p.m. EST, and Friday, September 7, 2007, from 9 a.m.–2 p.m. EST. The meeting will be open to the public.

ADDRESSES: The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify MJ Karimi via e-mail at *Madjid.KarimieAsl@ACF.hhs.gov,* or via telephone at 202–619–0634 no later than August 24, 2007. PCPID will attempt to meet requests made after that date, but cannot guarantee availability. All meeting sites are barrier free.

Meeting Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting MJ Karimi at the e-mail address or telephone number listed in the **ADDRESSES** section of this notice by 12 p.m. EST on September 5, 2007. For those unable to participate in person, audio of the proceedings may be accessed via telephone. Please use the above contact information for MJ Karimi to obtain telephone and passcode information.

Agenda: PCPID will meet to discuss the 2007 Report to the President. They will also discuss possible content areas for the 2008 Report to the President and will divide into subcommittees for that purpose.

FOR FURTHER INFORMATION CONTACT: Sally D. Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Suite 210, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–619–0634, fax: 202–205–9591. E-mail: *satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. PCPID, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: August 1, 2007.

Sally D. Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. E7–15974 Filed 8–14–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0073]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals

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 September 14, 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 0910–0519. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

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.

Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals (OMB Control Number 0910–0519)—Extension

Under 21 CFR 1240.63(a)(2)(ii), an individual must submit a written request to seek permission to capture, offer to capture, transport, offer to transport, sell, barter, or exchange, offer to sell, barter, or exchange, distribute, offer to distribute, and/or release into the environment any of the following animals:

- Prairie dogs (Cynomys sp.),
- African Tree squirrels (Heliosciurus sp.),
- Rope squirrels (Funisciurus sp.)
- African Dormice (Graphiurus sp.),
- Gambian giant pouched rats (Cricetomys sp.),
- Brush-tailed porcupines (Atherurus sp.),
- Striped mice (Hybomys sp.), or

Any other animal so prohibited by order of the Commissioner of Food and Drugs (the Commissioner) because of that animal's potential to transmit the monkeypox virus.

The request cannot seek written permission to sell, barter, or exchange, or offer to sell, barter, or exchange, as a pet, the animals listed previously or any animal covered by an order by the Commissioner.

The request must state the reasons why an exemption is needed, describe the animals involved, and explain why an exemption will not result in the spread of monkeypox within the United States.

Our estimates are based on our current experience with the interim final rule. To estimate the number of respondents, we examined the number of requests we have received in fiscal year 2006. There were 122 requests, submitted by 65 individuals, in that time, and this figure represents a minor increase over the previous estimate of 120 annual responses (See 69 FR 7752, February 19, 2004). As we cannot determine whether the latest data indicates a trend towards more requests or is an anomaly, we have elected to increase our estimate to 122 requests. We also have revised the estimated number of respondents to 65 (compared to 120 in our previous estimate) and, as a result, adjusted the annual frequency per response to 1.88 (which represents 122 responses/65 respondents; the actual result is 1.8769, which we have rounded up to 1.88).

Furthermore, consistent with our earlier Paperwork Reduction Act submission, we will estimate that each respondent will need 4 hours to complete its request for an exemption. Therefore, the total reporting burden under 21 CFR 1240.63(a)(2)(ii)(A) and (B) will be 488 hours (122 responses × 4 hours per response = 488 hours).

In the **Federal Register** of March 13, 2007 (72 FR 11368), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1240.63(a)(2)(ii)(A) and (B)	65	1.88	122	4	488

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 8, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–15939 Filed 8–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Workshop to Discuss Development of a Women's Health Information Sharing Network

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

The Food and Drug Administration (FDA), Office of Women's Health is announcing a workshop to develop a women's health information sharing network, with assistance from the FDA Office of Women's Health, and to discuss opportunities for national nursing/nurse practitioner organizations to share information about their women's health education activities. Representatives of national community-based nursing and nurse practitioner organizations are invited. A continental breakfast will be provided.

Date and Time: The workshop will be held on September 18, 2007, from 8:30 a.m. to 12 p.m.

Location: The workshop will be held at the Association of Women's Health, Obstetric and Neonatal Nurses Association (AWHONN), 2000 L. St., NW., Suite 740, Washington, DC 20036.

Contact Person: Susana Perry, Food and Drug Administration, Office of Women's Health (HF–8), 5600 Fishers Lane, Rm. 16–65, Rockville, MD 20857, 301–827–0350, FAX: 301–827–9194, e-mail: *susana.perry@fda.hhs.gov*.

Registration: There is no fee, but preregistration is required.

Seating is limited. If you require special accommodations due to a disability, please contact Susana Perry at least 7 days in advance (September 11, 2007).

Dated: August 8, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–15944 Filed 8–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data Collection Tool for Rural Health Community-Based Grant Programs: (New)

The mission of the Office of Rural Health Policy (ORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language (Sec. 711 [42 U.S.C. 912]), Congress charged ORHP with "administering grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas." In 1991, the Health Service Outreach Grants were first appropriated under the authority of section 301 of the Public Health Service (PHS) Act. In 1996, the Health Centers Consolidation Act of 1996 added the section 330A Rural Health Outreach Grant Program to the PHS Act. In 2002, this was amended and authorized again in the PHS Act, section 330A, as the Rural Health Care Services Outreach, Rural Health Network Development, and Small Health Care Provider Quality Improvement Grant Programs. Five rural health grant programs are currently operating under this authority: (1) The Rural Health Care Services Outreach Grant Program (Outreach), (2) the Rural Health Network Development Program (Network Development), (3) the Small Health Care Provider Quality Improvement Grant Program (Quality), (4) the Delta States Rural Development Network Grant Program (Delta), and (5) the Network Development Planning Grant Program (Network Planning). These grants are to provide expanded delivery of health care services in rural areas, for the planning and implementation of integrated health care networks in rural areas, and for the planning and implementation of small health care provider quality improvement activities. In general, the grants may be used to expand access, coordinate, and improve the quality of essential health care services, and enhance the delivery of health care in rural areas.

For these programs, program performance measures were drafted to provide data useful to the programs and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993. These measures cover the principal topic areas of interest to ORHP, including: (a) Access to care, (b) the underinsured and uninsured, (c) workforce recruitment and retention, (d) sustainability, (e) health information technology, (f) network development, and (g) health-related clinical measures. Several measures will be used for all five programs. All measures will speak to the Office's progress toward meeting the goals set forth in its strategic plan.

The annual burden estimate for this proposed collection is as follows:

Grant program	Number of respondents	Frequency of responses	Total responses	Hours per response	Total hour burden
Rural Health Outreach Grant Program	121	1	121	1.25	151.25
Rural Health Network Development	33	1	33	13	429
Small Health Care Provider Quality Improvement Grant Program	15	1	15	1	15
Delta States Rural Development Network Grant Program	12	1	12	1.25	15
Network Development Planning Grant Program	10	1	10	4	40
Total	191		191		650.25

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: August 7, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15941 Filed 8–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White HIV/AIDS Treatment Modernization Act of 2006: Data Report Form: (OMB No. 0915–0253)—Revision

The Ryan White HIV/AIDS Program Annual Data Report (formerly called the CARE Act Data Report (CADR)) was initially created in 1999 by HRSA's HIV/AIDS Bureau. It has undergone revisions to incorporate the legislative changes that occurred in 2006. Grantees and their subcontracted service providers who are funded under Parts A, B, C, and D of the Ryan White HIV/AIDS Treatment Modernization Act of 2006, or Ryan White HIV/AIDS Program (codified under Title XXVI of the Public Health Services Act) fill out the report. All Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records of the providers receiving Ryan White HIV/AIDS Program funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities. Ryan White HIV/AIDS Program grantees are required to report aggregate data to HRSA annually. The Data Report form is filled out by grantees and their subcontracted service providers. The report has seven different sections containing demographic information about the service providers as well as the clients served, information about the type of core and support services provided as well as the number of clients served, information about counseling and testing services, clinical information about the clients served, demographic tables for Parts C and D, and information about the Health Insurance Program.

The primary purposes of the Data Report are to: (1) Characterize the organizations where clients receive services; (2) provide information on the number and characteristics of clients who receive Ryan White HIV/AIDS Program services; and (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information collected on the Data Report is critical for HRSA, State and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The response burden for grantees is estimated as:

Program under which grantee is funded	Number of grantee respondents	Responses per grantee	Hours to coordinate receipt of data reports	Total hour burden
Part A Only	56	1	40	2,240
Part B Only	59	1	40	2,360
Part C Only	361	1	20	7,220
Part D Only	90	1	20	1,800
Subtotal	566			13,620

The response burden for service providers is estimated as:

Program under which provider is funded	Number of respondents	Responses per provider	Hours per response	Total hour burden
Part A Only	792	1	26	20,592
Part B Only	653	1	26	16,978
Part C Only	108	1	44	4,752
Part D Only	75	1	42	3,150
Funded under more than one program	703	1	50	35,150
Subtotal	2,331			80,622
Total for Both Grantees & Providers	2,897			94,242

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 7, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15969 Filed 8–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 7, 2007, 9 a.m.–5 p.m., EST.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Friday, September 7 from 9 a.m. to 5 p.m. (EST). The public can join the meeting via audio conference call by dialing 1–888–709–9420 on September 7 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the September meeting will include, but are not limited to: Discussion of Vaccine Information Statements, report from the ACCV Futures II Workgroup, updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics and Evaluation Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Michelle Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *mherzog@hrsa.gov.* Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Michelle Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *mherzog@hrsa.gov.*

Dated: August 7, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15967 Filed 8–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: September 13, 2007, 8:30 a.m. to 5 p.m. September 14, 2007, 8:30 a.m. to 3 p.m.

Place: Hilton Washington, DC/Rockville Executive, Meeting Center, 1750 Rockville Pike, Rockville, MD 20852, Telephone: 301–468–1100.

Status: The meeting will be open to the public.

Purpose: The Committee will continue to focus on issues related to Health Information Technology/Electronic Medical Records (HIT/EMR) and its potential impact on Title VII Interdisciplinary, Community-Based Training Grant Programs identified under sections 751–756, Part D of the Public Health Service Act. The Committee may invite speakers to highlight various topics related to HIT/EMR including, but not limited to benefits and barriers; consumer privacy and confidentiality; implications for underserved and unserved populations, rural, geriatric and other populations; implementation and use of EMRs across various settings, i.e., hospitals, inpatient settings and ambulatory care sites (Health Centers, Rural Health Clinics); academic settings, i.e., interdisciplinary and community-based education and training of health professionals; health literacy and patient education; as well as the future of HIT/EMR as an interoperable system to enhance health care delivery. The meeting will allow committee members the opportunity to identify and discuss current efforts involving HIT/EMR and formulate appropriate recommendations for the Secretary and the Congress regarding the use of advanced technology to enhance interdisciplinary and community-based training of health professions students and practicing health professionals.

Agenda: The agenda includes an overview of the Committee's general business activities, presentations by experts on HIT/EMR related topics, and discussion sessions for the development of recommendations to be addressed in the Seventh Annual ACICBL Report.

Agenda items are subject to change as dictated by the priorities of the Committee.

For Further Information Contact: Anyone requesting information regarding the Committee should contact Louis D. Coccodrilli, Designated Federal Official for the ACICBL, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm 9–05, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–6950 or *lcoccodrilli@hrsa.gov.* Adriana Guerra, Public Health Fellow, can also be contacted with inquiries, (301) 443–6194 or *aguerra@hrsa.gov.*

Dated: August 7, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15968 Filed 8–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5124–N–12]

Notice of Proposed Information Collection for Public Comment: PHA Plans Standard Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. This is a revision to a currently approved collection.

DATES: *Comments Due Date:* October 15, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 402–4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Proposal: 5–Year and Annual Public Housing Agency (PHA) Plan.

OMB Control Number: 2577–0226.

Description of the Need for the Information and Proposed Use: Public Housing Agencies (PHAs) submit an annual plan for each fiscal year for which the PHA receives tenant-based assistance and public housing operating subsidy. This plan provides a framework for local accountability and to the extent possible, an easily identifiable source by which public housing residents, participants in the housing choice voucher program, and other members of the public may locate housing and services. The PHA plan is a web-based application (allowing PHAs to retrieve the applicable templates) that allows PHAs to provide their plans to HUD via the Internet. The system allows HUD to track plans every year with limited reporting and any changes from the previous submission.

Agency Form Numbers: HUD–50075; HUD–50077.

Members of the Affected Public: State and local government.

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS

PHA plan—form HUD–50075	PH/HCV	HCV only	Frequency	Total responses	Estimated hours	Annual plan burden hours	5-year plan burden hours
1.0 PHA Information	3163	976	1	4139	0.02	82.78	
2.0 Inventory	3163	976	1	4139	0.02	82.78	
3.0 Submission Type	3163	976	1	4139	0.02	82.78	
4.0 PHA Consortia	50	20	1	70	0.03	2.1	
5.0 Five-Year Plan	3163	976	1	4139	2		8278
6.0 Plan Elements not Subject to HUD Review	3163	976	1	4139	0.07	289.73	
7.0 Hope VI, Mixed Finance Modernization or Development, Demolition/ Disposition, Conversion of Public Housing, Homeownership Programs, and Project-based Vouchers	1000	400	1	1400	2	2800	
8.0 Capital Fund Financing (CFFP)	316	0	1	316	0.02	6.32	
9.0 Housing Needs	3163	976	1	4139	1.3	5380.7	
9.1 Strategy for Addressing Housing Needs	3163	976	1	4139	1.3	5380.7	
10.0 Additional Information	200	0	1	200	1.5	300	
11.0 Required Submissions—forms HUD–50070, HUD–50071, HUD–50077, SF–LLL, SF–LLL–A	3163	976	1	4139	0.4	1655.6	
Form HUD–50075.1	3163	0	1	3163	8	25304	
Form HUD–50075.2	3163	0	1	3163	3	9489	
Annual Plan Burden Hours						50856.49	
5-Year Plan Burden Hours							8278
Total Burden Hours – (Annual Plan Burden Hours * 5/yrs + 5-year Plan burden hours)	262560						
Average Burden Hours for all PHAs – (Total burden hours/5yrs)	52512.1						
Average Burden Hours Per PHA – (Average burden hours for all PHAs/4139 PHAs)	12.6871						

Status of the Proposed Information Collection: Reinstatement of previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 8, 2007.

Bessy Kong,

Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives.

[FR Doc. E7–15940 Filed 8–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices

ACTION: Notice of public meeting

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meetings will be held on September 18 and 19, 2007 in Alzada, MT. The meetings will start at 8 a.m. and adjourn at approximately 3:30 p.m. each day. The public comment period will be at 11 a.m. on the 18th. When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301. Telephone: (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics will include: Miles City and Billings Field Office manager updates, OHV subcommittee report and discussion session, Mining reclamation and travel management related field trips—and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: August 7, 2007.

M. Elaine Raper,

Field Manager.

[FR Doc. E7–15984 Filed 8–14–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Resource Management Plan, Newlands Project, Washoe, Lyon, and Churchill Counties, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental document (environmental assessment or environmental impact statement) and notice of public meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) proposes to prepare an environmental document for the purpose of evaluating options for management of natural resources within the Newlands Project.

The purpose of the action is to prepare a Resource Management Plan (RMP) for the lands managed in association with the Newlands Project. The RMP will be used to foster proper stewardship of public lands. The goal of Reclamation's RMP is to create a balance of resource development, recreation, and protection of natural and cultural resources for the lands and waters being managed. The plan will outline Reclamation management actions that will be implemented over a 10-year planning span.

DATES: Public scoping meetings will be held to solicit public input on identification of resource issues on Newlands Project lands and features, and for the development of alternative management strategies for those resources. There will be additional opportunities to comment on the scope of alternatives and impacts at such time as those alternatives and impacts have been further developed through the RMP and NEPA process.

The meetings dates and times are as follows:

- Tuesday, September 18, 2007, 6 to 8 p.m., Reno , NV.
- Wednesday, September 19, 2007, 6 to 8 p.m., Fallon, NV.

Written comments should be mailed to Reclamation at the address below by October 3, 2007.

ADDRESSES: The public scoping meeting locations are:

- Reno at the Western Heritage Cultural Center, 6000 Bartley Ranch Road.
- Fallon at the Fallon Convention Center, 100 Campus Way .

Written comments on the scope of this action should be sent to: Ms. Terri Edwards, Bureau of Reclamation, 705 N. Plaza Street, Room 320, Carson City, NV 89701, via e-mail *tedwards@mp.usbr.gov,* or faxed to 775–884–8376.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Edwards, Reclamation Project Manager, at the above address, at 775–884–8353, via fax at 775–884–8376, or e-mail at *tedwards@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Reclamation's authority to prepare RMPs is specifically outlined in the Reclamation Recreation Management Act of 1992 (Pub.L. 102–575, Title 28). The Act authorized the preparation of RMPs to "provide for the development, use, conservation, protection, enhancement, and management of resources of Reclamation lands *in a manner that is compatible with the authorized purposes of the Reclamation Project* associated with the Reclamation lands."

The Newlands Project is primarily an irrigation project as set forth in legislation. The purposes of the Newlands Project were expanded in 1990 under Section 209 of Public Law 101–618. In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary of Interior is authorized to operate and maintain the project for the purposes of:

1. Fish and wildlife, including endangered and threatened species;
2. Municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;
3. Recreation;
4. Water quality; and
5. Any other purposes recognized as beneficial under the law of the State of Nevada.

However, additional uses of the Newlands Project (1) Must have valid water rights and follow State law for any water right transfers; (2) must not increase diversions of Truckee River water to the Newlands Project over those allowed under applicable

operating criteria and procedures; and (3) must not conflict with applicable court decrees.

Reclamation has a contract with the Truckee-Carson Irrigation District to operate and maintain the Newlands Project Works. There is no intention to address operation and maintenance of Project Works through this RMP process.

The Newlands Project RMP should achieve the following:

1. Identify issues and set forth goals and procedures for managing and administering resources on public lands.

2. Establish use levels and types of development that protect resources and are compatible with the uses of the public within legal and policy constraints; minimize conflicts among users.

3. Provide a flexible tool for land managers to assist in the proper administration, day-to-day operation, development, and management of public lands.

4. Provide a tool to aid in setting funding and staffing levels.

If special assistance is required at the scoping meetings, please contact Terri Edwards at 775–884–8353 or via e-mail at *tedwards@mp.usbr.gov*. Please notify Ms. Edwards as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 7, 2007.

Michael Nepstad,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E7–15988 Filed 8–14–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Notice of Commission Determination To Institute Advisory Opinion Proceedings; in the Matter of Certain Laser Bar Code Scanners and Scan Engines, Components Thereof, and Products Containing Same; Investigation No. 337–TA–551

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. 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: This investigation was instituted on October 26, 2005, based on a complaint filed by Symbol Technologies Inc. ("Symbol") of Holtsville, New York. The complaint, as amended, alleged violations of Section 337 of the Tariff Act of 1930 (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 laser bar code scanners or scan engines, components thereof, or products containing the same, by reason of infringement of various claims of United States Patent Nos. 5,457,308 ("the '308 patent"); 5,545,889 ("the '889 patent"); 6,220,514 ("the '514 patent"); 5,262,627 ("the '627 patent"); and 5,917,173 ("the '173 patent"). The complaint named two respondents: Metro Technologies Co., Ltd. of Suzhou, China, and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively, "Metrologic").

On January 29, 2007, the ALJ issued an initial determination ("ID") finding a violation of section 337 in the importation of certain laser bar code scanners and scan engines, components thereof, and products containing the same, in connection with certain asserted claims. The ID also issued monetary sanctions against Respondents for discovery abuses. Complainant, Respondents, and the Commission investigative attorney ("IA") each filed petitions for review of the ID on February 8, 2007. They each filed responses to each other's petitions on February 16, 2007.

The Commission determined to review the following issues: (1) The construction of the limitation "single, unitary, flexural component" in the '173 patent, and related issues of infringement, domestic industry, and validity; (2) the construction of the limitation "oscillatory support means" in the '627 patent, and related issues of infringement, domestic industry, and validity; (3) the construction of claims in the '889 patent containing "central area" limitations, and related issues of infringement, domestic industry, and validity; (4) the construction of the "scan fragment" limitation in the asserted claims of the '308 patent; and (5) the construction of the term "plurality" in the asserted claims of the '308 patent.

On May 30, 2007, the Commission determined to make the following modifications to the claim constructions set forth in the final ID: (1) In the '173 patent, the "single, unitary, flexural component" must include "portions integral with each other;" (2) in the '627 patent, the "oscillatory support means" must oscillate; (3) the limitations in the '889 patent containing requirements that the folding mirror be "near" or "adjacent" the central area of the collecting mirror allow for the folding mirror to be positioned close to, and either in front of or behind, the central area of the collecting mirror, but do not allow it to be mounted to the collecting mirror outside of the central area; (4) "scan fragment," as used in the '308 patent, means "a scan that reads less than all of a bar code symbol and that would have been discarded before the advent of scan-stitching techniques;" and (5) the term "plurality" in the '308 patent means "two or more."

These changes did not affect the ALJ's findings on validity, infringement, or domestic industry. The Commission therefore affirmed those findings, as well as his finding of a violation of section 337 by Metrologic with regard to claim 48 of the '627 patent and claims 17 and 18 of the '173 patent. Consistent

with its determination of violation, the Commission issued a Limited Exclusion Order and Cease and Desist Order related to claim 48 of the '627 patent and claims 17 and 18 of the '173 patent.

On June 18, 2007, Metrologic filed a request for an advisory opinion under Commission Rule 210.79 (19 CFR 210.79) that would declare that its new scan module does not infringe claim 17 or 18 of the '173 patent and claim 48 of the '627 patent, and therefore is not covered by the Commission's Limited Exclusion Order or Cease and Desist Order issued on May 30, 2007. Metrologic further requested that the Commission conduct all proceedings related to the advisory opinion in an expedited manner and on summary determination based upon the evidence presented in its request without formal hearing or discovery.

The Commission has examined Metrologic's request for an advisory opinion and has determined that it complies with the requirements for institution of an advisory opinion proceeding under Commission Rule 210.79(a). Accordingly, the Commission has determined to institute an advisory opinion proceeding. The Commission directs Symbol and the IA to state their views regarding whether they oppose Metrologic's request for an advisory opinion that the new scan module is not covered by the Limited Exclusion Order or Cease and Desist Order, and if so, whether they believe the matter should be referred to the ALJ.

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 section 210.79(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.79(a)).

Issued: August 10, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–15977 Filed 8–14–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Alder-Gold Copper Company*, Civil Action No. 2:07–CV–00255–EFS, was lodged on August 3, 2007 with the United States District Court for the Eastern District of Washington. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act seeking clean up of groundwater contamination and recovery of costs incurred at the Alder Mill Site in Okanogan County, Washington.

The Consent Decree resolves the United States' claims by requiring the defendant Alder-Gold Copper Company to sell three parcels of land and pay a portion of the proceeds of the sale to the United States to reimburse the United States for its costs in cleaning up the Site. The United States estimates that the Consent Decree will result in the payment of between $200,000 and $300,000 to the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ess.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alder-Gold Copper Company*, DOJ Ref #90–11–3–08880.

The proposed consent decree may be examined at the office of the United States Attorney, 920 W. Riverside Ave, Suite 340, Spokane, Washington 99201, and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the proposed consent decree may also be examined on the Department of Justice Web site, at *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.25 (or $4.75, for a copy that omits the exhibits and signature pages) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3998 Filed 8–14–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy, notice is hereby given that on July 30, 2007, a proposed consent decree ("Consent Decree") in *United States* v. *ArvinMeritor, Inc.*, Civil Action No. 1:07–cv–00735–GJQ, was lodged with the United States District Court for the Western District of Michigan.

The Consent Decree would resolve claims against the sole defendant—ArvinMeritor, Inc.—for (i) Unreimbursed past response costs incurred by the United States related to removal and remedial actions at the Rockwell International Superfund Site ("Site") in Allegan, Michigan in exchange for a payment of $3,475,000. The Consent Decree would also require ArvinMeritor to pay the United States' future response costs related to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box No. 7611, Washington, DC 20044–7611, and should refer to *United States* v. *ArvinMeritor, Inc.*, Civil Action No. 1:07–cv–00735–GJQ, D.J. Ref. 90–11–3–08013.

The Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Avenue, NW., Suite 501, Grand Rapids, Michigan 49503, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or

by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6 (24 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3997 Filed 8–14–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 2, 2007, a proposed settlement in *United States* v. *Ludlow's Sand and Gravel Co., Inc. and G. Kevin Ludlow*, Civil No. 07–cv–00793–GLS–DEP, was lodged with the United States District Court for the Northern District of New York.

In this action, the United States asserts claims against Ludlow's Sand and Gravel Co., Inc. and G. Kevin Ludlow under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9606 and 9607, for recovery of response costs and injunctive relief related to the Ludlow's Sand and Gravel Superfund Site (the "Site") in Paris, New York. The proposed Consent Decree is based on the Defendants' limited ability-to-pay and provides for Ludlow's Sand and Gravel Co., Inc. to perform services in support of the cleanup activities by the United States at the Site. The Decree provides the Defendants with a covenant not to sue under Sections 106 and 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ludlow's Sand and Gravel Co., Inc. and G. Kevin Ludlow, et al.*, D.J. Ref. 90–11–3–08084/1.

The settlement may be examined at the Office of the United States Attorney, Northern District of New York, 100 S. Clinton Street, Syracuse, NY 13261–7198 and at the Region II Office of the U.S. Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866. During the public comment period, the settlement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the settlement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3999 Filed 8–14–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 C.F.R. 50.7, notice is hereby given that on August 2, 2007, a proposed consent decree in *United States* v. *Waste Management of Wisconsin, Inc.*, Civil Action Number 07–C–0424–C, was lodged with the United States District Court for the Western District of Wisconsin.

The consent decree resolves claims against Waste Management of Wisconsin, Inc. ("WMWI") on behalf of the Environmental Protection Agency ("EPA") under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for response action to be taken and response costs to be incurred in responding to the release and threatened release of hazardous substances at the Hagen Farm Superfund Site ("Site") in Dane County, Wisconsin.

WMWI has been performing the remedial action for the Site under a unilateral administrative order issued by EPA. Under the consent decree, WMWI will complete performance of the Site remedy and will reimburse the United States for response costs the United States will incur at the Site. The consent decree also provides for disbursement to WMWI, if specified conditions are met, of approximately $1.525 million credited to the Site from the proceeds of a prior, separate settlement in *In re U.E. Systems, Inc., et al.*, No. 91–32791 (Bankr. N.D. Ind.). The *U.E. Systems* settlement required that amounts recovered therein "shall reduce the liability of the non-settling potentially responsible parties * * * by the amount of the credit." The proposed consent decree with WMWI will implement that provision of the *U.E. Systems* settlement while also providing the United States with essentially full recovery of all response costs incurred or to be incurred by the United States in connection with the Site.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Waste Management of Wisconsin, Inc.*, D.J. Ref. 90–11–2–588/1.

The Consent Decree (including all its Appendices A through N) may be examined at the Office of the United States Attorney for the Western District of Wisconsin, 660 W. Washington Ave., Suite 303, Madison, Wisconsin 53701, and at the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the Consent Decree and all Appendices may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees. html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. Please enclose a check for $22.25 for the Consent Decree text only, or for $163.25 for the Consent Decree including all attachments (25 cents per page reproduction costs), payable to the U.S. Treasury, or, if by e-mail or fax, forward a check for the appropriate amount to

the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3996 Filed 8–14–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: Comments on the petitions must be received by the Off ice of Standards, Regulations, and Variances on or before September 14, 2007.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *E–Mail: Standards-Petitions@dol.gov.*
2. *Telefax:* 1–202–693–9441.
3. *Hand Delivery or Regular Mail:* Submit comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Edward Sexauer, Chief, Regulatory Development Division at 202–693–9444 (Voice), *sexauer.edward@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2007–043–C.

Petitioner: Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

Mine: Robinson Run Mine #95, MSHA I.D. No. 46–01318, located in Harrison County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables supplying power to permissible equipment used in continuous mining sections to be increased to 1,000 feet. The petitioner states that: (1) The trailing cables will be used only to supply three-phase, 575-volt power to loading machines, shuttle cars, roof bolters (longwall and section), section ventilation fans and de-gas drills; (2) the trailing cables will not be smaller than # 2 American Wire Gauge (AWG) and the trailing cables for the roof bolter will not be smaller than # 4 AWG; (3) all circuit breakers used to protect # 2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes; (4) the trip setting of the circuit breakers will be sealed or locked and will have permanent and maintained legible labels; (5) each label will identify the circuit breaker as being suitable for protecting # 2 AWG cables; (6) the circuit breakers used to protect # 4 AWG trailing cables exceeding 600 feet in length will have instantaneous trip units calibrated to trip at 500 amperes and the trip setting of the circuit breakers will be sealed or locked and will have permanent and maintained legible labels; (7) each label will identify the circuit breaker as being suitable for protecting # 4 AWG cables; and (8) replacement instantaneous trip units used to protect # 4 AWG trailing cables will be calibrated to trip at 500 amperes and will be sealed and locked. The petitioner has listed specific additional procedures in this petition that will be used to comply with the proposed alternative method. Individuals may review a complete description of the procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–044–C.

Petitioner: C.W. Mining Company, P.O. Box 300, Huntington, Utah 84528.

Mine: Bear Canyon No. 4 Mine, MSHA I.D. No. 42–02335, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.350 (Belt air course ventilation).

Modification Request: The petitioner requests a modification of the existing standard to permit the belt-haulage entry to be used as the return entry during two-entry longwall panel development and as an intake entry to provide additional face ventilation during longwall panel retreat mining. The petitioner states that an atmospheric monitoring system (AMS) for early warning fire detection will be utilized throughout the two-entry system and all sensors that are part of the AMS will be diesel-discriminating (carbon monoxide and nitric oxide) sensors. The petitioner has listed specific additional procedures in this petition that will be used to comply with the proposed alternative method. Individuals may review a complete description of the procedures at the MSHA address listed in this notice. The petitioner asserts that the petitioned-for method will at all times guarantee no less than the same measure of protection afforded by 30 CFR 75.350, and that application of the existing standard will result in a diminution of safety to the miners.

Docket Number: M–2007–045–C.

Petitioner: Alpha & Omega Coal Company, LLC, Drawer 887, Louisa, Kentucky 41230.

Mine: No. 2 Deep Mine, MSHA I.D. No. 46–09187, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 2, 400-volt AC-powered continuous mining equipment at the No. 2 Deep Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–046–C.

Petitioner: Twentymile Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.335(c) (Construction of seals).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with the prohibition against welding, cutting, or soldering on the longwall face equipment within 150 feet of seals. The petitioner states that: (1) Prior to welding or cutting activity on the longwall face within 150 feet of seals, the ventilation plan will be reviewed with the person(s) involved in such welding or cutting; (2) welding, cutting, or soldering with arc or flame will be done under the supervision of a qualified person who will make a diligent search for fire during and after such operations and shall continuously test for methane with means approved by the Secretary immediately before and during such operations; (3) welding, cutting, or soldering will not be conducted in air that contains 1.0 volume per centum or more of methane; (4) the area will be wet or rock dusted, and additional rock dust or suitable fire extinguishers will be immediately available during such welding or cutting; (5) prior to welding and cutting, a determination will be made concerning the presence of ventilation quantities and velocities specified in the ventilation plan; (6) prior to welding and cutting, a qualified person will examine the area for methane as well as the area towards the closest seal to the area, for a distance that can be traveled safely; and (7) if methane is detected above 1.0 percent at any location during examination, cutting, welding, or soldering on the longwall face or in the tailgate area will be not be permitted. The petitioner asserts that the proposed alternative method would provide an equal measure of protection as that provided by the existing standard.

Docket Number: M–2007–047–C.

Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763.

Mine: Mine # 77, MSHA I.D. No. 15–09636, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit check points (examination points) for air volume and quality to be established in two locations of the Alwest 2 Mains due to poor roof conditions that prevent foot travel through the affected area of the mine. The petitioner proposes to establish evaluation points at certain points to evaluate airflow entering the Alwest 2 Mains and exiting the Alwest 2 Mains. The petitioner also proposes to establish ventilation check points between certain breaks of the Alwest 2 Main. The petitioner states that due to the adverse roof conditions and the distance from active works, it is impractical to expose personnel to traveling the affected area. The petitioner describes additional safety precautions, such as signage and establishing and monitoring air measurement stations, at locations that would allow a certified person to effectively evaluate ventilation in the affected area of the mine. The petitioner has listed specific additional procedures in this petition that will be used to comply with the proposed alternative method. Individuals may review a complete description of the procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2007–048–C.

Petitioner: Paramont Coal Company Virginia, LLC, 2333 Alumni Park Plaza, Suite 310, Lexington, Kentucky.

Mine: Deep Mine # 26, MSHA I.D. No. 44–06929, located in Wise County, Virginia.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of a Getman Roadbuilder, Model RDG–1504, and Serial Number 6946. The petitioner proposes to: (1) Operate one Getman Roadbuilder without front brakes as originally designed; (2) train grader operators to lower the moldboard to provide additional stopping capability in emergency situations; (3) train operators to recognize the appropriate speeds to use on different roadway conditions; and (4) limit the maximum speed to 10 miles per hour. The petitioner states that: (1) The Roadbuilder has six wheels and a braking system on the four rear wheels; (2) the weight distribution over the four back wheels and the machine's braking system is adequate to stop the machine; and (3) the safety of the miners will not be compromised. The petitioner asserts that the design of the Getman Roadbuilder guarantees no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2007–007–M.

Petitioner: Phelps Dodge Safford, Inc., 1124 W. Thatcher Blvd., Suite 202, Safford, Arizona 85546.

Mine: Safford Mine, MSHA I.D. No. 02–00299, located in Graham County, Arizona.

Regulation Affected: 30 CFR 56.6309(b) (Fuel oil requirements for ANFO).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of used petroleum-based, lubrication oil from diesel equipment (recycled oil) for blending with diesel fuel and conventional prills to create ammonium nitrate-fuel oil (ANFO). The petitioner has listed specific additional procedures in this petition that will be used to comply with the proposed alternative method. Individuals may review a complete description of the procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method would at all times guarantee no less than the same measure of protection as the existing standard.

Dated: August 9, 2007.

Jack Powasnik,

Acting Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–16022 Filed 8–14–07; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–182; EA–07–197]

In the Matter of Purdue University (Purdue University Research Reactor); Order Modifying Facility Operating License No. R–87

I

Purdue University (the licensee) is the holder of Facility Operating License No. R–87 (the license) issued on August 16, 1962, by the U.S. Atomic Energy Commission, and subsequently renewed

on August 8, 1988, by the U.S. Nuclear Regulatory Commission (the NRC or the Commission). The license authorizes operation of the Purdue University Research Reactor (the facility) at a power level up to 1 kilowatt thermal. The facility is a research reactor located on the campus of Purdue University, in the city of West Lafayette, Tippecanoe County, Indiana. The mailing address is Radiation Laboratories, Purdue University, Nuclear Engineering Building, 400 Central Drive, West Lafayette, IN 47907–2017.

II

Title 10 of the Code of Federal Regulations (10 CFR) Section 50.64, limits the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors) (see 51 FR 6514). The regulation, which became effective on March 27, 1986, requires that if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel develop and submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency and a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if not all cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202).

Section 2.309 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing and to participate as a party.

III

On August 13, 2006 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML062400495 and ML070920272), as supplemented on May 3 (ADAMS Accession No. ML071410299) and June 18, 2007 (ADAMS Accession No. ML071700633), the NRC staff received the licensee's conversion proposal, including its proposed modifications and supporting safety analyses. HEU fuel assemblies are to be replaced with LEU fuel assemblies. The fuel assemblies contain fuel plates, typical of the Materials Testing Reactor design, with the fuel consisting of uranium silicide dispersed in an aluminum matrix. These plates contain the uranium–235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64 and has determined that public health and safety and common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the attachments to this Order and the schedule included herein. The attachments to this Order specify the changes to the license conditions and technical specifications that are needed to amend the facility license and contains an outline of a reactor startup report to be submitted to NRC within six months following return of the converted reactor to normal operation.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *It is hereby ordered that:*

Facility Operating License No. R–87 is modified by amending the license conditions and technical specifications as stated in the attachments to this Order (*Attachment 1:* MODIFICATIONS TO FACILITY OPERATING LICENSE NO. R–87; *Attachment 2:* OUTLINE OF REACTOR STARTUP REPORT). The Order becomes effective on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel assemblies to operate the facility as specified in the licensee proposal dated August 13, 2006 (ADAMS Accession Nos. ML062400495 and ML070920272), as supplemented on May 3 (ADAMS Accession No. ML071410299) and June 18, 2007 (ADAMS Accession No. ML071700633), or (2) 23 days after the date of publication of this Order in the **Federal Register**.

V

Any person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Any answer or request for a hearing shall set forth the matters of fact and law on which the person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for a hearing shall be filed (1) by first class mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) by courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Because of possible delays in delivery of mail to the United States Government Offices, it is requested that answers and/or requests for hearing be transmitted to the Secretary of the Commission either by e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or by

facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101 (the verification number is 301–415–1966). Copies of the request for hearing must also be sent to the Director, Office of Nuclear Reactor Regulation and to the Assistant General Counsel for Materials Litigation and Enforcement, Office of the General Counsel, with both copies addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and the NRC requests that a copy also be transmitted either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

If a person requests a hearing, he or she shall set forth in the request for a hearing with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In accordance with 10 CFR 51.10(d), this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an Order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9), no environmental assessment or environmental impact statement is required.

For further information see the application from the licensee dated August 13, 2006 (ADAMS Accession Nos. ML062400495 and ML070920272), as supplemented on May 3 (ADAMS Accession No. ML071410299) and June 18, 2007 (ADAMS Accession No. ML071700633), the staff's request for additional information dated March 13, 2007 (ADAMS Accession No. ML070680273), and the cover letter to the licensee, attachments to this Order and the NRC staff's safety evaluation dated August 9, 2007 (ADAMS Accession No. ML071920168), available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated this 9th day of August 2007.

For the Nuclear Regulatory Commission

James T. Wiggins,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–16070 Filed 8–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Unistar Nuclear LLC; Notice of Receipt and Availability of Part of an Application for a Combined License

On July 13, 2007 (ML071980294), UniStar Nuclear LLC (UniStar) filed with the Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and 10 CFR Part 52, a portion of an application for a combined license (COL) for a U.S. EPR nuclear power plant at the Calvert Cliffs Nuclear Power Plant facility in Lusby, Maryland identified as Calvert Cliffs Nuclear Power Plant Unit No. 3. UniStar supplemented its filing with a letter dated July 16, 2007 (ML072000363).

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52 and may submit such an application in two parts in accordance with 10 CFR 2.101(a)(5). The part submitted by UniStar on July 13 consists of the Environmental Report required by 10 CFR 50.30(f) as well as other information required under 10 CFR 2.101(a)(5). This information includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 50.33, Chapter 2, "Site Characteristics," of the safety analysis report (SAR), which is submitted pursuant to 10 CFR 50.34(a)(1), and an agreement to limit access to sensitive information submitted pursuant to 10 CFR 50.37. To support its application, UniStar also requested an exemption from 10 CFR 2.101(a)(5), as documented in its July 13, 2007 letter. The NRC will review this exemption request and render its decision as part of the acceptance review of the application.

Subsequent **Federal Register** notices will address the acceptability of this part of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application is ML071980294. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html*.

Dated at Rockville, Maryland, this 9th day of August, 2007.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Deputy Director, Licensing Operations Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E7–16068 Filed 8–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05004]

Notice of License Termination and Release of the Northern States Power Company Pathfinder Site in Sioux Falls, SD, for Unrestricted Use

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of license termination and site release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Chad J. Glenn, Materials Decommissioning Section, Division of Waste Management and Environmental Protection, NRC, Washington, DC 20555; telephone: (301) 415–6722; fax: (301) 415–5369; or e-mail at: *cjg1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR Part 20 Subpart E, the U.S. Nuclear Regulatory Commission (NRC) is providing notice that it has terminated Northern States

Power Company, dba Xcel Energy, Materials License No. 22–08799–02 and released its Pathfinder site in Sioux Falls, South Dakota for unrestricted use. The licensee's request for an amendment to authorize decommissioning of its Pathfinder site was noticed in the **Federal Register** on August 4, 2004 (69 FR 47185). A notice of availability of an environmental assessment and finding of no significant impact related to this action was published in the **Federal Register** on May 25, 2005 (70 FR 30150) and the license was amended to authorize decommissioning activities in accordance with a NRC-approved decommissioning plan.

In a letter dated February 26, 2007, Xcel Energy provided final radiological status surveys to demonstrate that the site met the license termination criteria in 10 CFR Part 20 Subpart E. NRC staff conducted inspections and confirmatory surveys including the collection of samples and independent measurements of on-site soils and building surfaces.

The NRC staff evaluated Xcel Energy's request and reviewed the results of the final radiological surveys. Based on those reviews, the staff determined that the site met the unrestricted release criteria in 10 CFR Part 20 Subpart E. The staff prepared a Safety Evaluation Report (SER) to support its termination of the Northern States Power Company license for the Pathfinder site.

II. Further Information

In accordance with 10 CFR Part 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the SER, 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 ADAMS accession number for the termination letter with enclosed SER, titled "Completion of Decommissioning Activities Northern States Power Company DBA Xcel Energy Pathfinder Site, Sioux Falls, South Dakota (Docket No. 030–05004)" is ML071900323. If you do not have access to ADAMS or if there are problems in accessing a document 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*.

This document 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 NRC, Rockville, MD, this 8th day of August 2007.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–16067 Filed 8–14–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA); Notice Regarding the 2007 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for petitions.

SUMMARY: This notice announces the 2007 Annual Review of the Andean Trade Preference Act (ATPA). Under this process petitions may be filed calling for the limitation, withdrawal or suspension of ATPA or ATPDEA benefits by presenting evidence that the eligibility criteria of the program are not being met. USTR will publish a list of petitions filed in response to this announcement in the **Federal Register**.

DATES: The deadline for the submission of petitions for the 2007 Annual ATPA Review is September 17, 2007.

ADDRESSES: Submit petitions by electronic mail (e-mail) to *FR0716@ustr.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446 and the facsimile number is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201–06), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210) and extended until February 29, 2008 by H.R. 1830, the Andean Trade Preference Act, (Pub L. 110–42), provides for trade benefits for eligible Andean countries. Consistent with Section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of articles and countries for the benefits of the ATPA, as amended. The 2007 Annual ATPA Review is the fourth such review to be conducted pursuant to the ATPA review regulations. To qualify for the benefits of the ATPA and ATPDEA, each country must meet several eligibility criteria, as set forth in sections 203(c) and (d), and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3202(c), (d); 19 U.S.C. 3203(b)(6)(B)), and as outlined in the **Federal Register** notice USTR published to request public comments regarding the designation of eligible countries as ATPDEA beneficiary countries (67 FR 53379). Under section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)), the President may withdraw or suspend the designation of any country as an ATPA or ATPDEA beneficiary country, and may also withdraw, suspend, or limit preferential treatment for any product of any such beneficiary country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria.

The ATPA regulations provide the schedule of dates for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2007 Annual ATPA Review, all petitions to withdraw or suspend the designation of a country as an ATPA or ATPDEA beneficiary country, or to withdraw, suspend, or limit application of preferential treatment to any article of any ATPA beneficiary country under the ATPA, or to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) of the ATPA, must be received by the Andean Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. EDT on September 17, 2007. Petitioners should consult 15 CFR 2016.0 regarding the content of such petitions.

E-mail submissions should be single copy transmissions in English, and the total submission including attachments should not exceed 50 pages. Submissions should use the following subject line: "2007 Annual ATPA Review—Petition." Documents must be submitted as either WordPerfect (".WPD"), MSWord (".DOC"), Adobe ("PDF"), or text (".TXT") file. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ × 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Petitions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" in large, bold letters at the top and bottom of every page of the document. The public version that does not contain business confidential information must be clearly marked either "PUBLIC VERSION" or "NON-CONFIDENTIAL" in large, bold letters at the top and bottom of every page. The file name of any document containing business confidential information attached to an e-mail transmission should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the person or party submitting the petition. Submissions by e-mail should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the submission. The e-mail address for submissions is *FR0716@ustr.eop.gov*. Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E7–16014 Filed 8–14–07; 8:45 am]

BILLING CODE 3190–W7–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 2007. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 2007.

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:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Protection Act of 2006, for premium payment years beginning in 2006 or 2007, the required interest rate is the "applicable percentage" of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year").

On February 2, 2007 (at 72 FR 4955), the Internal Revenue Service (IRS) published final regulations containing updated mortality tables for determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA for plan years beginning on or after January 1, 2007. As a result, in accordance with section 4006(a)(3)(E)(iii)(II) of ERISA, the "applicable percentage" to be used in determining the required interest rate for plan years beginning in 2007 is 100 percent.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 2007 is 6.33 percent (i.e., 100 percent of the 6.33 percent composite corporate bond rate for July 2007 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 2006 and August 2007.

For premium payment years beginning in	The required interest rate is
September 2006	5.19
October 2006	5.06
November 2006	5.05
December 2006	4.90
January 2007	5.75
February 2007	5.89
March 2007	5.85
April 2007	5.84
May 2007	5.98
June 2007	6.01
July 2007	6.32
August 2007	6.33

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 2007 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of August 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–15987 Filed 8–14–07; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2007–1; Order No. 24]

Appeal of Post Office Closing in Ecorse, MI

AGENCY: Postal Regulatory Commission.

ACTION: Notice and order.

SUMMARY: This document informs the public that an appeal of the closing of the Ecorse, MI, Classified Finance

Station has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), the Commission has received an appeal of the closing of the Ecorse Classified Finance Station, Ecorse, MI. The appeal was postmarked and therefore deemed filed on July 27, 2007, and a supplemental letter detailing the appeal was deemed filed with the Commission on July 30, 2007.[1] The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2007–1 to consider the petitioner's appeal.

Categories of issues apparently raised. The categories of issues that appear to be raised include:

2. Observance of procedure required by law [39 U.S.C. 404(d)(5)(B)];

3. Effect on the community [39 U.S.C. 404(d)(2)(A)(i)]; and

4. Effect on employees [39 U.S.C. 404(d)(2)(A)(ii)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission, or otherwise file a responsive pleading, is August 13, 2007. 39 CFR 3001.113.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov*. Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal Government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site *http://www.prc.gov*, unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov*, or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846. The petitioner is granted a waiver from Filing Online.

Intervention. Those, other than the petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention on or before September 4, 2007 in accordance with 39 CFR 3001.111. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9(a) and 10(a).]

Further procedures. The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed [39 U.S.C. 404(d)(5)]. A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 14 days from the issuance of the request. Responses to such memoranda will be due 14 days from the date the memoranda are filed. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. 39 CFR 3001.21. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

Suspension application. Petitioner's supplemental letter filed on July 30, 2007, requests that the Commission suspend the effectiveness of the Postal Service's determination to close the Ecorse Classified Finance Station. Rule 114(b) [39 CFR 3001.114(b)] requires the Postal Service to file and serve on the petitioner an answer to the suspension application by August 9, 2007, unless an extension under rule 16 is granted[2] [39 CFR 3001.16(b)]. The Commission finds that the Postal Service would be unduly prejudiced if it had to file a response to the suspension application by that date. Therefore, it, *sua sponte*, extends the Postal Service's time to answer the suspension application until August 16, 2007. The petitioner may file a reply to the Postal Service's answer within 7 days of the Postal Service filing such answer.

Ordering Paragraphs

It is ordered:

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by August 13, 2007.

2. The Postal Service shall file an answer to the suspension application by August 16, 2007.

3. The petitioner may file a reply to the Postal Service's answer to the suspension application within 7 days of the Postal Service filing such answer.

4. The procedural schedule is listed below.

5. The petitioner is granted a waiver from Online Filing.

6. The Secretary shall arrange for publication of this notice and order and procedural schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

July 27, 2007	Filing of Appeal.
August 9, 2007	Commission Notice and Order of Filing of Appeal.
August 13, 2007	Deadline for Postal Service to file administrative record in this appeal.
August 16, 2007	Deadline for Postal Service to file an answer to suspension application [39 CFR 3001.114(b)].
September 4, 2007	Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)].

[1] The Postal Accountability and Enhancement Act section 1006 amends 39 U.S.C. 404(d) to make the date of receipt by the Commission of a post office closing appeal the date on which it receives a Postal Service postmark.

[2] Given the changes in the law discussed in footnote 1, the Postal Service's time to respond to a suspension application is shortened considerably.

PROCEDURAL SCHEDULE—Continued

August 31, 2007	Petitioner's Participant Statement or Initial Brief due [see 39 CFR 3001.115(a) and (b)].
September 20, 2007	Postal Service's Answering Brief due [see 39 CFR 3001.115(c)].
October 5, 2007	Petitioner's Reply Brief due should petitioner choose to file one [see 39 CFR 3001.115(d)].
October 12, 2007	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
November 26, 2007	Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(d)(5)].

Dated: August 9, 2007.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E7–15953 Filed 8–14–07; 8:45 am]

BILLING CODE 7710–FW–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: August 7, 2007.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 71 FR 42445, August 2, 2007.

ADDITION: Filing with the Postal Regulatory Commission for a Negotiated Service Agreement.

At its closed meeting on August 7, 2007, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–4002 Filed 8–10–07; 3:18 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56219; File No. SR–Amex–2007–78]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 520 in Order To Clarify Reporting Requirements

August 8, 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 August 2, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Amex. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 520 (Options and Selling Agreements) in order to clarify reporting requirements. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the reporting requirements of Rule 520. The proposal seeks to amend Rule 520 to make clear that it does not apply to standardized options and corporate stock options.[5]

Rule 520 is designed to facilitate the Exchange's surveillance for and enforcement of rules against manipulation in connection with private or over-the-counter options. Because standardized options and corporate stock options are already subject to similar reporting requirements, via a prospectus or a registration statement, the Exchange believes it is redundant and needlessly burdensome to also require each member and member organization to submit reports to the Exchange under Rule 520 for standardized options and corporate stock options.

The Exchange submits that the proposed amendment to Rule 520 will provide additional transparency and clarity to the Rule. Furthermore, the Exchange believes that the proposed amendment to Rule 520 will enable Amex standards to be more consistent with those of the New York Stock Exchange LLC ("NYSE")[6] and the Philadelphia Stock Exchange, Inc. ("Phlx"),[7] and therefore facilitate uniform application of the reporting requirements.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

[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 Commission notes that revised Rule 520 requires each member and member organization to report to the Exchange such information as may be required with respect to any substantial option relating to listed securities, or securities admitted to unlisted trading privileges on the Exchange, acquired over-the-counter, in which such member, member organization, or allied member therein is directly or indirectly interested or of which such member, member organization, or allied member has knowledge by reason of transactions executed by or through such member or organization.

[6] *See* NYSE Rule 424.

[7] *See* Phlx Rule 784.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal raises no new regulatory issues and is consistent with similar rules of the NYSE and Phlx. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[14]

[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). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written 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. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

[13] *Id.*

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–78 and should be submitted on or before September 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15934 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56223; File No. SR–Amex–2007–60]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Shares of Eight Funds of the ProShares Trust Based on International Equity Indexes

August 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange ("Exchange Notice"). On July 27, 2007, Amex submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares ("Shares") of eight funds of the ProShares Trust ("Trust") [3] based on four international equity indexes. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.amex.com*.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust is registered as a business trust under the Delaware Corporate Code.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rules 1000A–AEMI and 1001A—1005A provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act"), as well as under the Act. Index Fund Shares are defined in Amex Rule 1000A–AEMI(b)(1) generally as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index. Amex Rule 1000A–AEMI(b)(2) permits the Exchange to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance.[4]

The Exchange proposes to list under Amex Rule 1000A–AEMI the Shares of eight new funds of the Trust that are designated as Short Funds (the "Short Funds") and UltraShort Funds (the "UltraShort Funds," and together with the Short Funds, collectively referred to as the "Funds").[5] Each of the Funds will have a distinct investment objective by attempting, on a daily basis, to correspond to a specified multiple of the inverse performance of a particular equity securities index as described below. The Funds will be based on the following benchmark indexes: (1) MSCI Emerging Markets Index; (2) MSCI Japan Index; (3) MSCI EAFE Index; and (4) FTSE/Xinhua 25 Index (each individually an "Underlying Index," and all indexes collectively the "Underlying Indexes").[6]

Specifically, the Exchange proposes to list and trade Shares of the Short Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes. If each of these Short Funds is successful in meeting its objective, the net asset value ("NAV") of the Shares of each Short Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day, before fees and expenses.

The Exchange also proposes to list and trade Shares of the UltraShort Funds that seek daily investment results, before fees and expenses, that correspond to twice the inverse or opposite (−200%) of the daily performance of the Underlying Indexes. If each of these UltraShort Funds is successful in meeting its objective, the NAV of the Shares of each UltraShort Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day, before fees and expenses.

ProShare Advisors LLC is the investment advisor (the "Advisor") to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.[7] While the Advisor will manage each Fund, the Trust's Board of Trustees (the "Board") will have overall responsibility for the Funds' operations. The composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act.[8] SEI Investments Distribution Company (the "Distributor"), a broker-dealer registered under the Act, will act as the distributor and principal underwriter of the Shares. JPMorgan Chase Bank, N.A. will act as the index receipt agent (the "Index Receipt Agent") for which it will receive fees. The Index Receipt Agent will be responsible for the processing, clearance, and settlement of purchase and redemption orders through the facilities of the Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") on behalf of the Trust.[9] The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

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[4] *See* Amex Rule 1000A—AEMI(b)(2)(iii) and Commentary .02 thereto (providing that the listing and trading of Index Fund Shares under paragraph (b)(2) thereof cannot be approved by the Exchange pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)).

[5] A list of the proposed Funds is set forth in Exhibit A to the Exchange Notice. The Commission has approved the listing and trading of certain Short Funds and UltraShort Funds based on a variety of underlying indexes. *See* Securities Exchange Act Release Nos. 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of shares of funds of the Trust based on certain underlying indexes); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of shares of funds of the Trust based on certain underlying indexes); and 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of shares of funds of the xtraShares Trust based on certain underlying indexes).

[6] The Statement of Additional Information ("SAI") for the Funds discloses that each Fund reserves the right to substitute a different Underlying Index. Substitutions can occur if an Underlying Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the applicable Underlying Index, or for any other reason determined in good faith by the Board (as defined herein). In such instance, the substitute index would attempt to measure the same general market as the then current Underlying Index. Consistent with applicable law, shareholders would be notified (either directly or through their respective intermediary) if a Fund's Underlying Index is replaced. In such case, the continued listing standards under Amex Rule 1002A would apply. *See* Amex Rule 1002A(b)(i)(B) (providing that the Exchange will consider the suspension of trading in, or removal from listing of, a series of Index Fund Shares if, among other circumstances, the Underlying Index or portfolio is replaced with a new index or portfolio, subject to certain exceptions).

[7] The Trust, Advisor, and Distributor ("Applicants") have filed with the Commission an application to amend the order under the 1940 Act (the "Application") for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act. *See* Investment Company Act Release No. 27609 (December 22, 2006), 72 FR 162 (January 3, 2007) (File No. 812–13329) (providing notification of an application for an order under Section 6(c) of the 1940 Act for an exemption from Sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the 1940 Act and Rule 22c–1 under the 1940 Act, and under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and (a)(2) of the 1940 Act).

[8] *See* 15 U.S.C. 80a–10 (setting forth certain restrictions and requirements with respect to affiliations or interest of directors, officers, and employees of registered investment companies).

[9] E-mail from Nyieri Nazarian, Assistant General Counsel, Amex, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 30, 2007 (clarifying the responsibilities of the Index Receipt Agent) ("Amex Confirmation").

Shares of the Funds issued by the Trust will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund. The Shares will be registered in book-entry form only, and the Trust will not issue individual share certificates. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC participants.

Underlying Indexes

While the Exchange proposes to list and trade the Shares of the Funds pursuant to Section 19(b)(1) of the Act, the Exchange represents that the Underlying Index components comply with the generic listing standards set forth in Commentary .02 to Amex Rule 1000A–AEMI.

MSCI Emerging Markets Index. The MSCI Emerging Markets Index is a free float-adjusted, market capitalization index that is designed to measure equity market performance in the global emerging markets. MSCI (*http://www.msci.com*) administers this Underlying Index exclusively, the component securities of which must meet objective criteria for inclusion. The MSCI Emerging Markets Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in such Underlying Index. The MSCI Emerging Markets Index is rebalanced quarterly, and its value is calculated in U.S. dollars on a real-time basis and disseminated every 60 seconds from 8 p.m. to 5 p.m. Eastern Time ("ET") the following day. As of June 2007, this Underlying Index consisted of 698 components, and the three largest stocks by weight were Samsung Electronics Co. Ltd., Anglo American Plc, and Taiwan Semiconductor Manufacturing Company Ltd.[10] The MSCI Emerging Markets Index consists of the following 25 emerging market country indices: Argentina, Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Israel, Jordan, Korea, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. The Commission has previously approved the listing and trading of an exchange-traded fund based on the MSCI Emerging Markets Index.[11]

MSCI Japan Index. The MSCI Japan Index seeks to measure the performance of the Japanese equity market. The MCSI Japan Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Underlying Index. The MSCI Japan Index aims to capture 85% of the publicly available total market capitalization in Japan. The MSCI Japan Index is rebalanced quarterly, and its value is calculated in U.S. dollars on a real-time basis and disseminated every 60 seconds from 8 p.m. to 2 a.m. ET.[12] As of May 31, 2007, this Underlying Index, which is comprised of stocks traded primarily on the Tokyo Stock Exchange, consisted of 321 components, and the three largest stocks by weight were Toyota Motor Corp., Sony Corp., and NTT DoCoMo Inc. The calculation method weights stocks in the Underlying Index by their beginning-of-period market capitalization. Share prices are "swept clean" daily and adjusted for any rights issues, stock dividends, or splits. This Underlying Index is calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested. Prices used to calculate the MSCI Japan Index are the official closing prices on the Tokyo Stock Exchange and other Japanese exchanges on which the equity securities comprising this Underlying Index are listed and primarily traded.[13] To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates. Under exceptional circumstances, MSCI may elect to use an alternative exchange rate for any country if the WM/Reuters Closing Spot Rate is believed not to be representative for the given currency on a particular day.

The MSCI Japan Index is calculated by MSCI for each trading day in the Japanese foreign exchange market based on official closing prices in such exchange market. For each trading day, MSCI publicly disseminates this Underlying Index value for the previous day's close. The MSCI Japan Index is reported periodically in major financial publications and also is available through vendors of financial information. The Commission has previously approved the listing and trading of an exchange-traded fund based on the MSCI Japan Index.[14]

MSCI EAFE Index. The MSCI EAFE Index is a free float-adjusted, market capitalization index that is designed to measure equity market performance in the developed markets of Europe, Australasia, and the Far East. The MSCI EAFE Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Underlying Index. The MSCI EAFE Index aims to capture 85% of the publicly available total market capitalization in each developed market included in the MSCI EAFE Index. The MSCI EAFE Index is rebalanced quarterly, and its value is calculated in U.S. dollars on a real-time basis and disseminated every 60 seconds from 10 p.m. to 12:30 p.m. ET.[15] As of June 2007, this Underlying Index consisted of 1021 components, and the three largest stocks by weight were BP Plc, Glaxosmithkline Plc, and Novartis Ag. The MSCI EAFE Index consists of the following 21 developed market country indices: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. The Commission has previously approved the listing and trading on the Amex of an exchange-traded fund based on the MSCI EAFE Index.[16]

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[10] Amex Confirmation (confirming the name of Taiwan Semiconductor Manufacturing Company Ltd.).

[11] *See* Securities Exchange Act Release No. 44900 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR–Amex–2001–45) (approving the listing and trading of shares of funds of iShares, Inc. based on certain foreign stock indexes, including the MSCI Emerging Markets (Free) Index), as corrected by Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (SR–Amex–2001–45) (correcting the Release Number from 44900 to 44990).

[12] Commentary .02(b)(ii) to Amex Rule 1000A–AEMI provides that if an Underlying Index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of non-U.S. component stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated Underlying Index value must remain available throughout Exchange trading hours. As a result, the Exchange states that, for such an Underlying Index, the value that will be disseminated during Amex trading hours would be static.

[13] Amex Confirmation (noting that the official closing prices used to calculate the MSCI Japan Index value would be taken from the Tokyo Stock Exchange and other Japanese exchanges on which certain equity securities comprising the MSCI Japan Index primarily trade).

[14] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43) (approving the listing and trading of Index Fund Shares based on the MSCI Japan Index, among other indexes). The Exchange represents that shares of the iShares MSCI Japan Index Fund (EWJ) are currently traded on the Exchange.

[15] *See supra* note 12. The Exchange states that between the start of trading on Amex to 12:30 p.m. ET, the MSCI EAFE Index value will be updated and disseminated every 60 seconds; however, from 12:30 p.m. ET to the close of Amex trading at 4:15 p.m. ET, the Exchange represents that only the last official calculated value will be available.

[16] *See* Securities Exchange Act Release No. 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR–Amex–2001–34) (approving the listing and trading of shares of a fund based on the MSCI EAFE Index, among other indexes). The Exchange states

Continued

FTSE/Xinhua China 25 Index. The FTSE/Xinhua China 25 Index consists of 25 of the largest and most liquid Chinese stocks (Red Chip and H shares)[17] listed and trading on HKSE. The component securities of the FTSE/Xinhua China 25 Index are weighted based on the free-float adjusted total market value of the shares so that securities with higher total market values generally have a higher representation in this Underlying Index. The component securities are screened for liquidity, and weightings are capped to avoid over-concentration in any one stock. The inception date of this Underlying Index was March 2001. The FTSE/Xinhua China 25 Index is rule-based and is monitored by a governing committee that is responsible for conducting a quarterly review of the constituent securities of the Underlying Index and for making changes to the Underlying Index in accordance with this Underlying Index's procedures.[18] The FTSE/Xinhua China 25 Index is rebalanced quarterly, and its value is calculated in U.S. dollars on a real-time basis and disseminated every 60 seconds from 9:15 p.m. to 4 a.m. ET.[19] The Commission has previously approved the listing and trading of an exchange-traded fund based on the FTSE/Xinhua China 25 Index.[20]

Investment Objective of the Funds

The Short Funds will seek daily investment results, before fees and expenses, of the inverse or opposite (−100%) of the applicable Underlying Index, and the UltraShort Funds will seek daily investment results, before fees and expenses, of twice the inverse or opposite (−200%) of the daily performance of the applicable Underlying Index. Each of these Funds will not invest directly in the component securities of the relevant Underlying Index, but instead will create short exposure to such Underlying Index. Each Fund will rely on establishing positions in certain financial instruments[21] that provide, on a daily basis, the inverse or opposite of, or twice the inverse or opposite of, as the case may be, the performance of the relevant Underlying Index. Normally, 100% of the value of the portfolios of each Fund will be devoted to Financial Instruments and certain money market instruments.[22]

While the Advisor will attempt to minimize any "tracking error" between the investment results of a particular Fund and the performance (and specified multiple thereof) or the inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or specified multiple thereof.[23] The Funds are expected to be highly inversely correlated to each applicable Underlying Index and investment objective (−0.85 or greater).[24] In each case, the Funds are expected to have a daily tracking error of less than 5% (500 basis points) relative to the specified multiple or inverse multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor will seek to establish an investment exposure in each portfolio corresponding to each Fund's investment objective based on its "Portfolio Investment Methodology," as described below. The Exchange states that the Portfolio Investment Methodology is a mathematical model based on well-established principles of finance that are widely used by investment practitioners, including conventional index fund managers.

As set forth in the Application, the Portfolio Investment Methodology was designed to determine for each Fund the portfolio investments needed to achieve its stated investment objectives. The Portfolio Investment Methodology takes into account a variety of specified criteria and data, the most important of which are: (1) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day; (2) the amount of required exposure to the Underlying Index; and (3) the positions in Financial Instruments and/or Money Market Instruments at the beginning of each trading day. The Advisor will then mathematically determine the end-of-day positions to establish the required amount of exposure to the Underlying Index (the "Solution"), which will consist of equity securities, Financial Instruments, and/or Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of Financial Instruments and/or Money Market Instruments that must be bought or sold for the day. The Solution represents the required exposure and, when necessary, is converted into an order or orders to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trade is made. Therefore, the NAV calculated for a

that the shares of the iShares MSCI EAFE Index Fund (EFA) are currently traded on the Exchange.

[17] The Exchange states that "H shares" are securities of companies incorporated in mainland China and nominated by the Chinese government for listing and trading on the Hong Kong Stock Exchange ("HKSE"). They are quoted and traded in Hong Kong dollars ("HKD"). The only Chinese investors permitted to trade H shares are those who are approved by the Chinese government; however there are no such restrictions on international investors. "Red Chips" are securities of companies incorporated in Hong Kong that trade on HKSE and are quoted in HKD. The constituents are substantially owned, directly or indirectly, by Chinese state-owned enterprises. The only Chinese investors permitted to trade Red Chips are those who are approved by the Chinese government; however, there are no such restrictions on international investors.

[18] Amex Confirmation (confirming that the governing committee is responsible for such duties).

[19] *See supra* note 12.

[20] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR–NYSE–2004–55) (approving the listing and trading of shares of the iShares FTSE/Xinhua China 25 Index Fund). The Exchange states that the shares of the iShares FTSE/Xinhua China 25 Index Fund (FXI) are currently traded on the Exchange. *See* Securities Exchange Act Release No. 50800 (December 6, 2004), 69 FR 72228 (December 13, 2004) (SR–Amex–2004–85) (approving the trading of shares of the iShares FTSE/Xinhua China 25 Index Fund pursuant to unlisted trading privileges).

[21] The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the "Financial Instruments").

[22] Money market instruments include (1) U.S. government securities and (2) repurchase agreements that (a) Are held by the Funds and (b) will be eligible investments in accordance with Rule 2a–7 under the 1940 Act (17 CFR 270.2a–7) (the "Money Market Instruments").

[23] The Exchange states that several factors may cause a Fund to vary from the relevant Underlying Index and investment objective including: (1) A Fund's expenses, including brokerage fees (which may be increased by high portfolio turnover) and the cost of the investment techniques employed by that Fund; (2) less than all of the securities in the benchmark Underlying Index being held by a Fund and securities not included in the benchmark Underlying Index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts, and the performance of the underlying securities in the cash market; (4) bid-ask spreads (the effect of which may be increased by portfolio turnover); (5) holding instruments traded in a market that has become illiquid or disrupted; (6) a Fund's Share prices being rounded to the nearest cent; (7) changes to the benchmark Underlying Index that are not disseminated in advance; (8) the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements; and (9) early and unanticipated closings of the markets on which the holdings of a Fund trade, resulting in the inability of the Fund to execute intended portfolio transactions.

[24] Correlation is the strength of the relationship between (1) The change in a Fund's NAV and (2) the change in the benchmark Underlying Index (investment objective). The statistical measure of correlation is known as the "correlation coefficient." A correlation coefficient of +1 indicates a perfect positive correlation, while a value of −1 indicates a perfect negative (inverse) correlation. A value of zero would mean that there is no correlation between the two variables.

Fund on a given day should reflect the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4 p.m. ET on Tuesday.

The timeline for the Portfolio Investment Methodology is as follows. Authorized Participants ("APs" or "Authorized Participants")[25] have a 3 p.m. ET cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4 p.m. ET cut-off for orders received via mail.[26] Orders are received by the Distributor and relayed to the Advisor within ten minutes. The Advisor will know by 3:10 p.m. ET the number of creation/redemption orders by APs for that day. Orders are then placed at approximately 3:40 p.m. ET as market-on-close orders. At 4 p.m. ET, the Advisor will again look at the exposure to make sure that the orders placed are consistent with the Solution, and, as described above, the Advisor will execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Description of Investment Techniques

In attempting to achieve its individual investment objectives, a Fund may invest its assets in Financial Instruments and Money Market Instruments. The Funds generally will not invest in equity securities, but rather will hold only Financial Instruments and Money Market Instruments. To the extent applicable, each Fund will comply with the requirements of the 1940 Act with respect to "cover" for Financial Instruments and, thus, may hold a significant portion of its assets in liquid instruments in segregated accounts.

Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade and will only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade. Each Fund will comply with the requirements of Rule 4.5 of the regulations promulgated by the Commodity Futures Trading Commission ("CFTC").[27]

Each Fund may enter into swap agreements and/or forward contracts for the purposes of attempting to gain exposure to its corresponding Underlying Index without actually transacting such securities. The Exchange states that the counterparties to the swap agreements and/or forward contracts will be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor's credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year and will only enter into such agreements with (1) Members of the Federal Reserve System, (2) primary dealers in U.S. government securities, or (3) major broker-dealers. Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as "cover" for Financial Instruments, as described above, or to earn interest.

The Trust will adopt certain fundamental policies consistent with the 1940 Act, and each Fund will be classified as "non-diversified" under the 1940 Act. Each Fund, however, intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" or "RIC" for purposes of the Internal Revenue Code to relieve the Trust and the Funds of any liability for Federal income tax to the extent that its earnings are distributed to shareholders.[28]

Availability of Information About the Shares and Underlying Indexes

The Trust's Internet Web site (*http://www.proshares.com*), which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (a) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (c) its prospectus and/or product description; and (d) other quantitative information, such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.[29]

Amex will disseminate for each Fund on a daily basis by means of the Consolidated Tape Association ("CT") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value ("IIV") (as defined and discussed herein), recent NAV, number of Shares outstanding, and the estimated cash amount and total cash amount per Creation Unit (as defined herein). The Exchange will make available on its Web site at *http://www.amex.com* daily trading volume, the closing prices, the NAV, and the final dividend amounts to be paid for each Fund.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust or another relevant Web site as determined by the Trust and/or the Exchange. Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the specific types of Financial Instruments and characteristics of such Financial Instruments and the cash equivalents and amount of cash held in the portfolio of each Fund.[30] This Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the "IIV File" (as described herein) and the portfolio composition file or "PCF" (as described herein) will occur at the same time.[31] Therefore, the same

[25] An Authorized Participant is: (1) Either (a) a broker-dealer or other participant in the continuous net settlement system of the NSCC, or (b) a DTC participant; and (2) a party to a participant agreement with the Distributor.

[26] The Exchange states that AP orders by mail are exceedingly rare.

[27] The Exchange states that CFTC Rule 4.5 provides an exclusion for investment companies registered under the 1940 Act from the definition of the term "commodity pool operator" upon the filing of a notice of eligibility with the National Futures Association.

[28] *See* Exchange Notice n.15 (providing a description of the Internal Revenue Code requirements pertaining to RICs). The Exchange Notice is available at Amex's Web site (*http://www.amex.com*).

[29] The Exchange states that the Application requests relief from Section 24(d) of the 1940 Act (15 U.S.C. 80a–24(d)), which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, if a product description is being provided in lieu of a prospectus, Commentary .06 of Amex Rule 1000A–AEMI requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Furthermore, any sales material will reference the availability of such circular and the prospectus.

[30] Amex Confirmation (confirming the information that will be disclosed on the Trust's Web site).

[31] *Id.* (confirming that the portfolio information contained in the Trust's public Web site will be

Continued

portfolio information (including accrued expenses and dividends) will be provided on the public Web site, as well as in the IIV File and PCF provided to Authorized Participants. The format of the public Web site disclosure and the IIV File and PCF will differ because the public Web site will list all portfolio holdings, while the IIV File and PCF will similarly provide the portfolio holdings, but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit.[32] Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Internet Web site and/or at the Exchange's Web site.

Beneficial owners of Shares (the "Beneficial Owners") will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual Fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of Fund distributions, and Form 1099–DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing value and the percentage change in the daily closing value for each Underlying Index will be publicly available on various Internet Web sites, and data regarding each Underlying Index will be available from the respective Underlying Index provider. Several independent data vendors also package and disseminate Underlying Index data in various value-added formats (including vendors displaying both securities and Underlying Index levels and vendors displaying Underlying Index levels only). The value of each Underlying Index will be updated intra-day on a real-time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 60 seconds throughout the trading day[33] by Amex or another organization authorized by the relevant Underlying Index provider.

Creation and Redemption of Shares

Each Fund will issue and redeem Shares only in aggregations of at least 75,000 (each aggregation a "Creation Unit"). Purchasers of Creation Units will be able to separate the Creation Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each Fund is expected to be in the range of $50–$250.

Creation Unit aggregations of the Funds will be purchased at NAV, plus a transaction fee. A purchaser will make a cash payment by 12 p.m. ET on the third business day following the date on which the request was made (T+3) or earlier. Purchasers of the Shares in Creation Unit aggregations must satisfy certain creditworthiness criteria established by the Advisor and approved by the Board, as provided in the participation agreement between the Trust and Authorized Participants. Creation Unit aggregations of the Shares will be redeemable for an all-cash payment equal to the NAV, less a transaction fee.

The Trust will create a PCF for each Fund, which will be transmitted to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system. Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File" to disclose the Funds' holdings of Financial Instruments.[34] The IIV File will contain for each Fund information sufficient by itself or in connection with the PCF and other available information for market participants to calculate a Fund's IIV and effectively arbitrage such Fund.

For example, the following information would be provided in the IIV File for a Fund holding Financial Instruments, such as swaps and futures contracts: (A) The notional value of the swaps held by such Fund (together with an indication of the Underlying Index on which such swap is based and whether the Fund's position is long or short); (B) the most recent valuation of the swaps held by the Fund; (C) the notional value of any futures contracts (together with an indication of the Underlying Index on which such contract is based, whether the Fund's position is long or short, and the contract's expiration date) held by the Fund; (D) the number of futures contracts held by the Fund (together with an indication of the Underlying Index on which such contract is based, whether the Fund's position is long or short, and the contract's expiration date); (E) the most recent valuation of the futures contracts held by the Fund; (F) the total assets and total shares outstanding of each Fund; and (G) a "net other assets" figure reflecting expenses and income of the Fund to be accrued during and through the following business day and accumulated gains or losses on the Fund's Financial Instruments through the end of the business day immediately preceding the publication of the IIV File. To the extent that any Fund holds cash or cash equivalents about which information is not available in a PCF, information regarding such Fund's cash and cash equivalent positions will be disclosed in the IIV File for such Fund. The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for the Funds during the following business day.

The Shares of the Funds will be purchased and redeemed entirely for cash. The use of an all-cash payment for the purchase and redemption of Creation Unit aggregations of the Shares is due to the limited transferability of Financial Instruments. The IIV File published before the open of business on a business day will permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit and the amount of cash that will be paid upon redemption of a Creation Unit, for each Fund for that business day. All Authorized Participants who are NSCC participants and the Exchange will have access to the Web site containing the IIV File. The IIV File will reflect trades made on behalf of a Fund and the creation/redemption orders for that business day. Accordingly, by approximately 7 p.m. ET, Authorized Participants will know the composition of a Fund's portfolio for the next trading day.

The Exchange believes that Shares will not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or

available at the same time the IIV File and PCF are disclosed by the Advisor).

[32] The composition will be used to calculate the NAV later that day.

[33] *See supra* notes 12 and 15 and accompanying text.

[34] The Trust or the Advisor will post the IIV File to a password-protected Internet Web site before the opening of business on each business day, and all Authorized Participants and the Exchange will have access to a password and the Web site containing the IIV File. The Funds, however, will disclose each business day to the public identical information, but in a format appropriate to public investors, at the same time the Funds disclose the IIV File and PCF, as applicable, to industry participants.

premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit, and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances, the arbitrageur locks in a profit, and the markets move back into line.[35]

Dividends and Distributions

Dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Each Fund may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year.

Dividends and other distributions on the Shares of each Fund will be distributed, on a *pro rata* basis to Beneficial Owners of such Shares. Dividend payments will be made through DTC and DTC participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Dividend Reinvestment Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the service, and such investors should ascertain from their broker such necessary details. Shares acquired pursuant to such service will be held by the Beneficial Owners in the same manner and subject to the same terms and conditions as those for original ownership of Shares. Brokerage commissions, charges, and other costs, if any, incurred in purchasing Shares in the secondary market with the cash from the distributions generally will be an expense borne by the individual Beneficial Owners participating in reinvestment through such service.

Dissemination of Indicative Intra-Day Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of the CT (1) Continuously throughout the trading day, the market value of a Share, and (2) at least every 15 seconds throughout Amex's trading day, a calculation of the IIV,[36] as calculated by the Exchange (the "IIV Calculator"). The Exchange states that comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per-Share basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex is expected to be close to the most recently calculated Fund NAV on a per-Share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

The IIV Calculator will disseminate the IIV throughout the trading day for each Fund by: (1) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (2) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (3) adding the values from (1) and (2) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs) to arrive at a value; and (4) dividing that value calculated in (3) above by the total number of Shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares under Amex Rule 1002A. A minimum of two Creation Units (at least 150,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange, pursuant to Amex Rule 1002A(a)(ii), will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per share for each Fund will be calculated daily and made available to all market participants at the same time. The Exchange represents that the Trust is required to comply with Rule 10A–3 under the Act[37] for the initial and continued listing of the Shares.

Amex Trading Rules and Trading Halts

The Shares are equity securities subject to Amex rules governing the trading of equity securities.[38] In addition, Amex Rule 154–AEMI(c)(ii)[39] and Commentary .04 to Amex Rule 190[40] apply to Index Fund Shares listed on the Exchange, including the Shares.

[35] In their Application, the Applicants stated that they do not believe that all-cash payments for creations/redemptions will affect arbitrage efficiency. This is because the Applicants believe it makes little difference to an arbitrageur whether Creation Unit aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the Share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a basket of securities. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the Financial Instruments.

[36] The IIV is also referred to by other issuers as an "Estimated NAV," "Underlying Trading Value," "Indicative Optimized Portfolio Value (IOPV)," and "Intraday Indicative Value" in various places such as the prospectus and marketing materials for different exchange-traded funds.

[37] 17 CFR 240.10A–3 (setting forth listing standards relating to audit committees).

[38] Amex Confirmation (clarifying Amex trading rules applicable to the Shares).

[39] Amex Rule 154–AEMI(c)(ii) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Amex Rule 950–ANTE(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation. The Exchange has designated Index Fund Shares, including the Shares, as eligible for this treatment.

[40] Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security or securities that can

Continued

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors include, but are not limited to, (1) The extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor will be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in Shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Amex Rule 1002A(b)(ii) sets forth the trading halt parameters with respect to Index Fund Shares. If the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Information Circular

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations regarding the application of Commentary .06 of Amex Rule 1000A–AEMI to the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or product description delivery requirements that apply to the Funds.[41]

The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. In particular, the Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) The recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[42] in general, and furthers the objectives of Section 6(b)(5),[43] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no 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 states that no written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex 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.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.[44]

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–Amex–2007–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

be subdivided or converted into the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

[41] The Exchange states that the any product description used in reliance on Section 24(d) of the 1940 Act (15 U.S.C. 80a–24(d)) will comply with all representations and conditions set forth in the Application. *See supra* note 29.

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

[44] In the Exchange Notice, Amex requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–60 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15936 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56226; File No. SR–BSE–2007–35]

Self-Regulatory Organizations; Boston Stock Exchange, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Market Opening Procedures of the Rules of the Boston Options Exchange

August 8, 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 August 3, 2007, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to amend Chapter V, Section 9(e) of the rules of the Boston Options Exchange ("BOX") to establish a permanent market opening procedure and to also define the relationship between the opening of an underlying stock in its primary market and the opening of the option on BOX during such times when the underlying stock's primary market has not opened. The text of the proposed rule change is available on the BSE's Web site at *http://www.bostonoptions.com*, at BSE's principle office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 4, 2004, the Commission approved the market opening guidelines, as set forth in the BOX Rules, on a pilot basis through August 6, 2004[5] and has since extended the Pilot Program through August 6, 2007.[6] The purpose of this rule filing is to make these market opening guidelines permanent. The Exchange proposes to make its market opening guidelines permanent since they have successfully opened the market since BOX's inception.[7]

In addition, the purpose of this rule filing is also to define the relationship between the opening of the underlying stock in its primary market and the opening of the option on BOX during such times when the underlying stock's primary market has not opened.[8] The BSE seeks to establish a process that allows for BOX to have the proper flexibility to open its market in an option in the morning when all other option Exchanges are open for trading and BOX rules currently do not allow for the opening of said options.

In establishing this process, the BSE seeks to delegate to the Exchange the authority to decide whether BOX should open the market in an option when the underlying stock has not opened in the primary market, and all other Exchanges are trading the option. The Exchange presently has no express authority within the BOX Rules to authorize said opening of the market. The BSE seeks to establish this process to allow BOX to have the same authority as other Exchanges,[9] to eliminate a competitive disadvantage and to provide additional liquidity and competitive quotes into the marketplace. Specifically, the Exchange will delay opening an option until the underlying security has opened unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the option.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 49192 (February 4, 2004), 69 FR 7051 (February 12, 2004) (SR–BSE–2004–05).

[6] *See* Securities Exchange Act Release Nos. 50163 (August 6, 2004) 69 FR 50230 (August 13, 2004) (SR–BSE–2004–28); 52166 (July 29, 2005), 70 FR 44957 (August 4, 2005) (SR–BSE–2005–34); 54507 (September 26, 2006) 71 FR 58020 (October 2, 2006) (SR–BSE–2006–36); and 54467 (September 18, 2006) 71 FR 55530 (September 22, 2006) (SR–BSE–2006–37).

[7] The BOX market first opened on February 6, 2004.

[8] The proposed rule will deem an underlying security to have opened on the primary market when the primary market has reported a transaction in the underlying security, or disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever occurs first.

[9] *See* ISE Rules 701(b)(2) and 701(b)(3).

under Section 6(b) in general,[10] and Section 6(b)(5) of the Act,[11] in particular, that an exchange have rules that are designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will define the relationship between the opening of the stock in its primary market and the opening of the option on BOX during outages which will provide for a quick, efficient, fair and orderly market opening process.

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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4[13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6) of the Act,[14] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the Exchange may have a market opening procedure which commences immediately. The Commission believes that the proposed rule change does not raise any new regulatory issues and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, so that the proposal may become operative upon filing.[15]

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–BSE–2007–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–35. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–35 and should be submitted on or before September 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15933 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56227; File No. SR–CBOE–2007–83]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend CBOE Rules Relating to the Appointment Cost for Options on the Nasdaq-100 Index Tracking Stock

August 8, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2007, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

Rule 19b–4(f)(6) thereunder.[4] The Exchange submitted Amendment No. 1 to the proposed rule change on August 7, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to the appointment cost for options on the Nasdaq-100 Index Tracking Stock. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/Legal*), at the CBOE'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.3 and Rule 8.4 in connection with CBOE's determination to change the appointment cost for options on the Nasdaq-100 Index Tracking Stock (QQQQ). Presently, QQQQ options are classified as a Tier A+ option class and have an appointment cost of .25. CBOE proposes to remove QQQQ options from Tier A+ and, as a result, lower its appointment cost. As a Hybrid 2.0 Class, QQQQ options will fall within the appointment cost structure set forth in Rule 8.3(c)(i) and Rule 8.4(d), and based on its trading volume, be included in Tier A with an appointment cost of .10. CBOE notes that it re-evaluated the appointment cost for QQQQ options and determined to lower it in order to lower the cost of access to CBOE's marketplace in this option class.

[4] 17 CFR 240.19b–4(f)(6).

2. Statutory Basis

Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 neither received nor solicited written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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 written notice of its intent to file 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,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

Under Rule 19b–4(f)(6) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the proposal may take effect upon filing. The Exchange believes that the proposed rule change does not raise any new regulatory issues and promotes competition by reducing the access costs of trading in QQQQ options. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date so that the proposal may become operative upon filing.[11]

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

[7] The Exchange has fulfilled this requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–83. 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

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–83 and should be submitted on or before September 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15901 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56225; File No. SR–ISE–2007–32]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto To Remove Certain Rules From Its Rulebook

August 8, 2007.

On May 9, 2007, the International Securities Exchange, LLC (the "Exchange" or the "ISE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove certain ISE rules. On June 8, 2007, ISE filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on June 27, 2007.[3] The Commission received no comments on the proposal.

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 registered securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The ISE proposes to remove Rule 403 (Nominal Employment), Rule 605 (Other Affiliations of Registered Persons), and Rule 615 (Addressing of Communications to Customers). The Exchange believes that the concern addressed by Rule 403, which prohibits members from obtaining business by employing a person in a nominal position, is adequately addressed in existing Rule 406, which limits gratuities.[6] The Exchange also believes that Rule 605, which effectively prohibits registered persons of its members from engaging in outside business activities unless approved by the Exchange or the member's designated examining authority, is no longer necessary given significant market structure changes.[7] Lastly, the Exchange believes that Rule 615 is unnecessary as ISE members are also subject to ISE Rules 600 and 2114, which effectively require ISE members that do a public business to be registered with FINRA, and the Exchange believes that the FINRA rules pertaining to the customer communication policies for its members conducting a public business should sufficiently address the topic covered by Rule 615. The Commission therefore believes it is consistent with the Act for the Exchange to delete these rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–ISE–2007–32), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15902 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55936 (June 21, 2007), 72 FR 35276 ("Notice").

[4] In approving this proposal, the Commission considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] Rule 406 prohibits a member from giving any compensation or gratuity in any one year in excess of $50.00 to any employee of the Exchange or in excess of $100.00 to any employee of any other member or of any non-member broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange.

[7] The Exchange also notes that rules of the Financial Industry Regulatory Authority Inc. ("FINRA")(f/k/a the National Association of Securities Dealers, Inc.) governing its members' dealing with the public do not have a comparable provision.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56228; File No. SR–NASDAQ–2007–056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto, To Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

August 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On July 27, 2007, Nasdaq filed Amendment No. 1. On August 6, 2007, Nasdaq withdrew Amendment No. 1 and filed Amendment No. 2, which replaced the text of the original filing in its entirety. The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify pricing for the Nasdaq Market Center. Nasdaq will make the proposed rule change effective retroactively as of February 12, 2007.

The text of the proposed rule change appears below. Proposed new language is italicized and proposed deletions are in brackets.[3]

* * * * *

7013. Consolidated Quotation Service and Exchange-Listed Securities Transaction Credit

(a) No change.

(b) Nasdaq members that trade securities listed on [the NYSE ("Tape A") and] Amex ("Tape B") through Nasdaq may receive from Nasdaq transaction credits based on the number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com.*

of transactions attributed to them. A transaction is attributed to a member if the transaction is executed through the Nasdaq Market Center, and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order). A Nasdaq member may earn credits from [one or both] *a* pool[s] maintained by Nasdaq[, each pool] representing 50% of the revenue paid by the Consolidated Tape Association to Nasdaq for [each of Tape A and] Tape B transactions after deducting the amount that Nasdaq pays to the Consolidated Tape Association for capacity usage. A Nasdaq member may earn credits from the pool[s] according to the member's pro rata share of transactions attributed to Nasdaq members in [each of Tape A and] Tape B for each calendar quarter. Liquidity providers executing transactions in Tape B securities through the Nasdaq Market Center will receive credits with respect to such transactions on an estimated monthly basis[; all other credits under this rule will be paid on a quarterly basis].

7014. [Nasdaq Market Center for Non-Nasdaq Securities] *Reserved.*

[The charges to be paid by members using the Nasdaq Market Center for trading non-Nasdaq exchange-listed securities through the Nasdaq Market Center shall consist of a fixed service charge of $200 per member per month, transaction charges as provided in Nasdaq Rule 7018 and equipment-related charges as provided elsewhere in the Rule 7000 Series.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes two retroactive changes to its fee schedule to address transition issues arising from its commencing operations as a national securities exchange for trading non-Nasdaq securities on February 12, 2007. First, Nasdaq proposes to eliminate a monthly fixed fee for trading non-Nasdaq securities through the Nasdaq Market Center, as provided in Rule 7014. That rule states that members trading such securities will pay a fixed service charge of $200 per member per month, transaction charges as provided in Nasdaq Rule 7018, and equipment-related charges as provided elsewhere in the Rule 7000 Series. Prior to February 12, 2007, Nasdaq's parent corporation, The Nasdaq Stock Market, Inc. ("Nasdaq Inc."), operated multiple platforms for trading non-Nasdaq securities, and charged a $200 monthly service fee under NASD rules. On February 12, 2007, Nasdaq began to trade non-Nasdaq securities as an exchange on a single platform, but Nasdaq Inc. continued to operate a separate platform for trading non-Nasdaq securities under NASD rules until March 5, 2007. Accordingly, the charge under NASD rules remained in place until March 5, 2007.

Because trading all securities on a single platform governed by a common set of trading rules reduces Nasdaq's costs, and because Nasdaq's pricing now makes few distinctions between the trading of Nasdaq-listed and non-Nasdaq securities, Nasdaq believes that it is appropriate to eliminate the $200 monthly service charge. Nasdaq seeks to make the change retroactive to February 12, 2007, the date when Nasdaq began trading these securities as an exchange. Making the change retroactive to February 12, 2007 will also ensure that members are not charged duplicative fees (a fee under NASD rules and a fee under Nasdaq rules) for the period from February 12, 2007 to March 5, 2007.

The rule's reference to equipment related charges is now obsolete, since trading through Nasdaq is no longer reliant on equipment provided by Nasdaq for use on the premises of its market participants. Finally, although transaction charges under Rule 7018 are applicable, Nasdaq believes that it is unnecessary to cross-reference them in a separate rule. Accordingly, the rule is being deleted in its entirety.

Second, Nasdaq proposes to correct an oversight with regard to the text of Rule 7013 that arose when Nasdaq began to operate as an exchange for trading non-Nasdaq securities on February 12, 2007. Prior to that time, and until March 5, 2007, Nasdaq Inc. shared market data revenue with NASD members trading non-Nasdaq stocks pursuant to former NASD Rule 7010(c)(2). For the period from February 1, 2006 through March 5, 2007, the text of that rule read as follows:

NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) For Tape B securities, the transaction is executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities, and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) for Tape A and Tape B securities, the transaction is not executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities, and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

The rule text reflected the fact that Nasdaq Inc. provided both electronic transaction execution systems similar to those currently provided by Nasdaq, and over-the-counter trade reporting services similar to those now provided by the NASD/NASDAQ Trade Reporting Facility ("TRF") and TRFs operated by other exchanges. For both Tape A and Tape B securities, the rule provided for sharing of revenues associated with over-the-counter trade reports,[4] but the rule provided for sharing of revenues associated with electronic system trades for Tape B securities only.[5] The rule was amended effective February 1, 2006 to eliminate sharing of revenues associated with electronic system trades for Tape A securities.[6]

Following transition to exchange operation on February 12, 2007, Nasdaq intended to maintain the status quo with respect to revenue sharing. Thus, NASD Rule 7001B, which applies to the NASD/NASDAQ TRF, continues to provide for sharing of revenues associated with over-the-counter trade reports, on terms comparable to those provided under former NASD Rule 7010(c)(2). By contrast, the text of Nasdaq Rule 7013, which was originally adopted through Nasdaq's Form 1

[4] "[F]or Tape A and Tape B securities, the transaction is not executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities. * * *." ITS/CAES, Brut and Inet were electronic trading systems operated by Nasdaq Inc.

[5] "[F]or Tape B securities, the transaction is executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities. * * *"

[6] Securities Exchange Act Release No. 53256 (February 8, 2006), 71 FR 8020 (February 15, 2006) (SR–NASD–2006–013).

application for registration as a national securities exchange,[7] was not amended to reflect the elimination of Tape A sharing prior to the time when Nasdaq began to trade non-Nasdaq securities as an exchange on February 12, 2007. The proposed rule change will rectify this oversight, and thereby allow Nasdaq to maintain the status quo with respect to market data revenue sharing, as had been Nasdaq's intent. Nasdaq has not distributed any Tape A revenues for system trades.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the change will eliminate an unnecessary charge with respect to trading of non-Nasdaq securities and thereby make Nasdaq's fees for trading these securities more reasonable. Nasdaq further believes that the change with respect to revenue sharing will allow Nasdaq to maintain the status quo with respect to Tape A revenue sharing that had existed prior to Nasdaq beginning to operate as a national securities exchange for trading non-Nasdaq securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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–NASDAQ–2007–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NASDAQ–2007–056 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15965 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

[7] Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56224; File No. SR–NYSEArca–2007–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the streetTRACKS® Gold Trust

August 8, 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 July 27, 2007, NYSE Arca, Inc. (the "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. On August 7, 2007, the Exchange submitted Amendment No. 1 to the proposal rule change. This order provides notice of the proposed rule change and approves the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Shares") of the streetTRACKS® Gold Trust ("Trust")[3] pursuant to NYSE Arca Equities Rule 5.2(j)(5). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] streetTRACKS® is a registered service mark of State Street Corporation, an affiliate of State Street Global Markets, LLC, the marketing agent of the Trust.

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

Pursuant to NYSE Arca Equities Rule 5.2(j)(5), which permits the trading of Equity Gold Shares[4] either by listing or pursuant to unlisted trading privileges ("UTP"), the Exchange proposes to list and trade the Shares. The Shares are currently listed on the New York Stock Exchange LLC ("NYSE"),[5] and the Exchange currently trades the Shares pursuant to UTP.[6] The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 5.2(j)(5) and thereby qualify for listing on the Exchange.

The Shares represent units of fractional undivided beneficial interests in and ownership of the Trust, the sole assets of which are gold bullion and, from time to time, cash. The value of each Share, which corresponds to a fixed amount of gold,[7] fluctuates with the spot price of gold. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses. The Trust is not actively managed and does not engage in any activities designed to profit from, or to ameliorate losses caused by, changes in the price of gold. The Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.[8] World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,[9] is the sponsor of the Trust ("Sponsor").[10] In addition, The Bank of New York is the trustee of the Trust ("Trustee"), HSBC Bank USA, N.A. is the custodian of the Trust ("Custodian"), and State Street Global Markets LLC is the marketing agent of the Trust ("Marketing Agent").

A detailed discussion of the gold market (including the London Bullion Market, over-the-counter gold market, and gold futures exchanges); gold market regulation; management, structure, fees, and expenses of the Trust; the process for creations and redemptions of the Shares; and the liquidity of the Shares, among others, can be found in the NYSE Proposal, NYSEArca UTP Order, and the Registration Statement (as defined herein).[11]

Trust Expenses and Management Fees

Generally, the assets of the Trust (*e.g.*, gold bullion) are sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of a Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include: (1) Fees paid to the Sponsor; (2) fees paid to the Trustee; (3) fees paid to the Custodian; (4) fees paid to the Marketing Agent; and (5) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value ("NAV") of the Trust.

Creation and Redemption of Shares

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (each such aggregation, a "Basket"). Authorized Participants[12] are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale.

Authorized Participants purchasing a Basket must make an in-kind deposit of gold ("Gold Deposit"), together with, if applicable, a specified cash payment ("Cash Deposit",[13] and together with the Gold Deposit, collectively, the "Creation Basket Deposit"). In the ordinary course of the Trust's operations, a Cash Deposit will not be required for the creation of Baskets. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment ("Cash

[4] As defined in NYSE Arca Equities Rule 5.2(j)(5)(A), Equity Gold Shares represent units of fractional undivided beneficial interests in and ownership of an Equity Gold Trust. The Exchange states that, while Equity Gold Shares are not technically Investment Company Units ("ICUs") and, thus, are not covered by NYSE Arca Equities Rule 5.2(j)(3), all other rules that reference ICUs also apply to Equity Gold Shares. In addition, the provisions set forth in NYSE Arca Equities Rule 8.201(g)–(i), as further discussed herein, apply to Equity Gold Shares. *See* NYSE Arca Equities Rule 5.2(j)(5).

[5] *See* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (approving the listing and trading of the Shares) ("NYSE Order") and 49849 (June 10, 2004), 69 FR 33984 (June 17, 2004) (SR–NYSE–2004–22) (providing notice of NYSE's proposal to list and trade the Shares) ("NYSE Notice," and together with the NYSE Order, collectively, the "NYSE Proposal").

[6] *See* Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving the adoption of NYSE Arca Equities Rule 5.2(j)(5) and the trading of the Shares pursuant to UTP) ("NYSEArca UTP Order"). *See also* Securities Exchange Act Release No. 53261 (February 9, 2006), 71 FR 8328 (February 16, 2006) (SR–PCX–2006–02) (expanding the trading hours of the Shares from 9:30 a.m. to 4:15 p.m. Eastern Time ("ET") to 4 a.m. to 8 a.m. ET) ("NYSEArca Trading Hour Proposal").

[7] Initially, each Share corresponded to one-tenth of a troy ounce of gold. The Exchange states that over time, the amount of gold associated with each Share decreases as the Trust incurs and pays maintenance fees and other expenses.

[8] In addition, the Exchange states that the Trust does not trade in gold futures contracts. The Trust takes delivery of physical gold that complies with certain gold delivery rules. Because the Trust does not trade in gold futures contracts on any futures exchange, the Trust is not regulated as a commodity pool and is not operated by a commodity pool operator.

[9] The World Gold Council is a not-for-profit association registered under laws of Switzerland.

[10] The Exchange states that the Shares are not obligations of, and are not guaranteed by, the Sponsor or any of its respective subsidiaries or affiliates.

[11] The Sponsor, on behalf of the Trust, filed Post-Effective Amendment No. 1 to Form S–3 on May 11, 2007 (Registration No. 333–139016). In connection with the initial issuance of the Shares, the Sponsor, on behalf of the Trust, filed Post-Effective Amendment No. 3 to Form S–1 on August 23, 2005 (Registration No. 333–105202). Such filings are collectively referred to herein as the "Registration Statement." *See* E-mail from Andrew Stevens, Assistant General Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated August 1, 2007 (confirming the disclosure of additional information on the Trust and the Shares) ("NYSEArca Confirmation I").

[12] An Authorized Participant is (1) A broker-dealer registered under the Act, or (2) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants will be regulated under federal and state banking laws and regulations. *See* NYSE Order, 69 FR at 64616.

[13] The amount of any required Cash Deposit will be determined as follows: (1) The fees, expenses, and liabilities of the Trust will be subtracted from any cash held or received by the Trust as of the date an Authorized Participant places an order to purchase one or more Baskets ("Purchase Order"); and (2) the remaining amount will be divided by the number of Baskets outstanding and then multiplied by the number of Baskets being created pursuant to the Purchase Order. If the resulting amount is positive, that amount will be the required Cash Deposit. If the resulting amount is negative, the amount of the required Gold Deposit will be reduced by a number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Purchase Order date. Fractions of an ounce of gold of less than 0.001 of an ounce included in the Gold Deposit amount will be disregarded.

Redemption Amount" [14] and together with the gold, collectively, the "Redemption Distribution"). The Shares are only redeemable in Basket aggregations.

The total amount of gold and any cash required for the creation or redemption of each Basket will be in the same proportion to the total assets of the Trust (net of accrued and unpaid fees, expenses, and other liabilities) on the date the Purchase Order is properly received, as the number of Shares to be created in respect of the Creation Basket Deposit bears to the total number of Shares outstanding on the date the Purchase Order is received. The Trust will impose transaction fees in connection with creation and redemption transactions.

Availability of Information on Underlying Gold Holdings and the Shares

Quotations and last-sale price information for the Shares are disseminated over the Consolidated Tape.[15] Gold price and market information are also available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 20 minutes).

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on COMEX, a division of the New York Mercantile Exchange, Inc. ("NYMEX"), is available by subscription from Reuters and Bloomberg. NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. Many of these Web sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, such quotations are generally subject to time delays.[16] Current gold spot prices are also generally available with bid/ask spreads from gold bullion dealers.

In addition, the Trust's Web site (*http://www.streettracksgoldshares.com*) provides at no charge continuously updated bids and offers indicative of the spot price of gold.[17] The Exchange provides a link to the Trust's Web site on its Web site at *http://www.nyse.com*. The Trust Web site also provides a calculation of the Indicative Intra-day Value or "IIV" of a Share, as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. The indicative spot price and IIV per Share are provided on an essentially real-time basis.[18] The Trust Web site also provides the NAV of the Trust, as calculated each business day by the Sponsor.[19]

In addition, the Web site for the Trust contains the following information, on a per-Share basis: (1) IIV as of the close of the prior business day; (2) the mid-point of the bid-ask price in relation to such IIV ("Bid/Ask Price");[20] (3) a calculation of the premium or discount of such price against such IIV; and (4) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust also provides the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site provides the last sale price of the Shares as traded in the United States, subject to a 20-minute delay.[21]

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of ICUs under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2).[22] As indicated above, the Shares are currently trading on the Exchange pursuant to UTP and satisfy the requirements of NYSE Arca Equities Rule 5.2(j)(5) for listing on the Exchange. A minimum of 100,000 Shares would be required to be outstanding when the Shares are listed. This minimum number of Shares required to be outstanding is comparable to requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange represents the Trust is required to

[14] The Cash Redemption Amount is equal to the excess (if any) of all assets of the Trust other than gold, less all estimated accrued but unpaid fees, expenses, and other liabilities, divided by the number of Baskets outstanding, and multiplied by the number of Baskets included in the Authorized Participant's order to redeem one or more Baskets ("Redemption Order"). The Trustee will distribute any positive Cash Redemption Amount through the Depository Trust Company ("DTC") to the account of the Authorized Participant at DTC. If the Cash Redemption Amount is negative, the credit to the Authorized Participant's unallocated account will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Redemption Order date. Fractions of a fine ounce of gold included in the Redemption Distribution of less than 0.001 of an ounce will be disregarded. Redemption Distributions will be subject to the deduction of any applicable tax or other governmental charges due.

[15] *See* NYSEArca Confirmation I (clarifying the information to be disseminated over the Consolidated Tape).

[16] There may be incremental differences in the gold spot price among the various information service sources. While the Exchange believes the differences in the gold spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of gold or gold-based products, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[17] The Trust Web site's gold spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The Bullion Desk is not affiliated with the Trust, Sponsor, Marketing Agent, Custodian, or the Exchange. The Exchange has been informed that the gold spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time.

[18] The Trust's Web site, to which the Exchange's Web site will link, disseminates an indicative spot price of gold and the IIV and indicates that these values are subject to an average delay of five to ten seconds. The Exchange states that the updated indicative spot price of gold and IIV per Share are disseminated during all three of the Exchange's trading sessions (Opening, Core Trading, and Late Trading Sessions). *See* NYSEArca Equities Rule 7.34 (Trading Sessions); *see also* NYSEArca Trading Hour Proposal, *supra* note 6; e-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated August 2, 2007 (confirming that the indicative price of gold and the IIV will be calculated and disseminated during the Opening, Core Trading, and Late Trading Sessions) ("NYSEArca Confirmation II").

[19] The Exchange represents that it would obtain a representation from the Trust, prior to listing, that the NAV per Share would be calculated daily and made available to all market participants at the same.

[20] The Bid-Ask Price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing IIV. *See* NYSEArca Confirmation II.

[21] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from major market data vendors. *See* NYSEArca Confirmation I.

[22] *See supra* note 4. NYSEArca Equities Rule 5.5(g)(2) provides for the continued listing standards for ICUs.

comply with Rule 10A–3 under the Act [23] for the initial and continued listing of the Shares.

Trading Rules and Halts

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (Opening, Core Trading, and Late Trading Sessions, 4 a.m. to 8 p.m. ET).[24]

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The factors may include (1) The extent to which trading is not occurring in gold, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares could be halted pursuant to the Exchange's "circuit breaker" rule [25] or by the halt or suspension of trading of the underlying gold.

In addition, NYSE Arca Equities Rule 5.5(g)(2)(b) provides that, if the IIV or the value of the underlying gold is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IIV or the value of the underlying gold occurs. If the interruption to the calculation or wide dissemination of the IIV or the value of the underlying gold persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, as appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG. In addition, the Exchange has in place an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts. Further, the Exchange notes that the Shares are subject to NYSE Arca Equities Rules 8.201(g)–(i), which set forth certain restrictions on ETP Holders [26] to facilitate surveillance and the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would include the following: (1) A description of the Shares; (2) the procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (3) a discussion of NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin would explain that: (a) The Trust is subject to various fees and expenses described in the Registration Statement; (b) the number of ounces of gold required to be purchased or to be delivered upon redemption would gradually decrease over time because the Shares comprising would represent a decreasing amount of gold due to the sale of the Trust's gold to pay Trust expenses; [27] (c) there is no regulated source of last-sale information regarding physical gold; (d) the Commission has no jurisdiction over the trading of gold as a physical commodity; (e) the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts; and (f) the NAV for the Shares would be calculated as of the earlier of the London PM fix [28] for such day or 12:00 p.m. ET each day that the Exchange is open for trading. The Bulletin would also discuss the exemptive, no-action, and/or interpretive relief granted by the Commission from Section 11(d)(1) of the Act [29] and certain rules under the Act.[30]

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,[31] in general, and Section 6(b)(5) of the Act,[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purpose 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.

[23] 17 CFR 240.10A–3 (providing requirements for listing standards relating to audit committees).

[24] The Exchange states that, while the Shares would trade on the Exchange until 8 p.m. ET, liquidity in the over-the-counter market for gold generally decreases after 1:30 p.m. ET when daily trading at COMEX and other world gold trading centers ends. Trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the over-the-counter gold market. The Exchange does not believe that the Shares would trade at a material discount or premium to the value of the underlying gold held by the Trust because of arbitrage opportunities. *See supra* note 18.

[25] *See* NYSE Arca Equities Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility).

[26] An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit (ETP) by NYSE Arca Equities.

[27] *See supra* note 7.

[28] *See* NYSE Notice, 69 FR at 33986 (providing a detailed discussion and explanation of the London PM fix).

[29] 15 U.S.C. 78k(d)(1).

[30] *See, e.g.*, Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, Commission, to Kathleen M. Moriarty, Esq., Carter, Ledyard & Milburn, dated November 17, 2004; Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, Commission, to Ms. Kathleen M. Moriarty, Esq., Carter, Ledyard & Milburn, dated December 12, 2005.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–76 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–2007–76. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–76 and should be submitted on or before September 5, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[34] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it previously approved the original listing and trading of the Shares on NYSE, and the instant proposal is substantively identical to the NYSE Proposal.[35]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[36] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares are disseminated over the Consolidated Tape. In addition, the Trust's Web site, to which the Exchange provides a link on its own Web site, disseminates the updated indicative spot price of gold and the IIV on a per-Share basis at least every 15 seconds during all of the Exchange's trading sessions. The Web site for the Trust also provides the daily NAV, the Bid-Ask Price, data related to the premium or discount of the Bid-Ask Price against the NAV, the prospectus, and recent reports to holders. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Complete real-time data for gold futures and options prices traded on COMEX is available by subscription, and NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. Current gold spot prices are also generally available with bid/ask spreads from gold bullion dealers.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the Trust, prior to listing, that the NAV per Share would be calculated daily and made available to all market participants at the same time.[37] In addition, NYSE Arca Equities Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares from being affiliated with a Market Maker in physical gold, gold futures, options on gold futures, or any other gold derivatives, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26 (Limitations on Dealings). Finally, NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Shares).

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 5.5(g)(2)(b) provides that, when the Exchange is the listing market, if the IIV or the value of the underlying gold[38] is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying gold occurs. If the interruption to the dissemination of the IIV or the value of the underlying gold persists past the trading day in which it occurred, the Exchange will halt trading. NYSE Arca Equities Rule 5.5(g)(2)(a) also provides that the Exchange may seek to delist the Shares

[33] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] *See supra* note 5.

[36] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[37] *See supra* note 19.

[38] The Exchange represents that, for purposes of complying with the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2), which apply to the Shares, the Exchange deems the value of the underlying gold to be analogous to the value of the index or portfolio, as such value is referenced in NYSE Arca Equities Rule 5.5(g)(2). *See* NYSEArca Confirmation II (confirming the analogy between the value of the underlying gold and the value of the index, as referenced in NYSE Arca Equities Rule 5.5(g)(2), for purposes of the instant proposal).

in the event the value of the underlying gold is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Shares.

(2) The Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including suitability recommendation requirements.

(3) The Exchange would require its members to deliver a prospectus to investors purchasing Shares prior to or concurrently with confirmation of a transaction in such Shares and will note this prospectus delivery requirement in the Information Bulletin.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously approved the original listing and trading of the Shares on NYSE and the trading of the Shares pursuant to UTP on the Exchange.[39] The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the Shares on the Exchange. Accelerating approval of this proposed rule change would allow the Shares to be listed on the Exchange without undue delay and continuously traded without interruption, to the benefit of investors.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NYSEArca–2007–76), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

[39] *See supra* notes 5 and 6.

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15937 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56221; File No. SR–Phlx–2007–48]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Adopt a Monthly Fee for Stock Execution Clerks That Handle Stand-Alone Equity Orders

August 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Phlx. On August 7, 2007, Phlx amended the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a monthly fee of $500.00 for stock execution clerks that handle stand-alone equity orders, such as to hedge traders' options positions. Those stock execution clerks who are assessed the $500.00 monthly fee will no longer pay the $25.00 Trading Floor Personnel Registration Fee, as the $500.00 monthly fee will encompass the $25.00 Trading Floor Personnel Registration Fee. The text of the proposed rule change is available at *http://www.phlx.com*, the Phlx, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) Consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed to execute transactions other than on the Exchange.[7] All stock execution clerks must register as such with the Exchange.[8]

Generally, "stock execution" refers to the service used by options traders to hedge their options trades with the underlying stock. Although stock execution today is often done electronically, stock execution clerks provide a service to Exchange members on the options floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered Options Traders. The transaction may be contingent on an options transaction[9] or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 7, 2007, the date the Exchange filed Amendment No. 1.

[7] *See* Exchange Rule 1090, Commentary .01(a).

[8] *See* Exchange Rule 620(b).

[9] A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. For certain options contingency orders, the contingency

Continued

may stand independently ("stand-alone equity orders").

The purpose of this proposal is to assess fees commensurate with the activities of stock execution clerks that handle stand-alone equity orders (*i.e.* orders that are not contingent on an options transaction). For those stock execution clerks that handle orders that are contingent on an options transaction, *i.e.* orders that are packaged with an options trade, the Exchange currently assesses charges associated with those contingency orders, such as options floor brokerage assessment and option transaction charges. The Exchange, however, does not assess fees in connection with stand-alone equity orders, which may be handled by a variety of intermediaries and which may be executed on different equity markets. The Exchange believes it is appropriate to charge a fee for stock execution clerks performing this function on the options floor because such clerks and such businesses generally are not subject to fees for doing business from the Exchange's options floor.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that it is equitable and reasonable to charge a fee for stock execution clerks that handle stand-alone equity orders because such clerks are generally not subject to Exchange fees for doing business from the Exchange's options floor. The Exchange believes that the $500.00 monthly fee, which encompasses the $25.00 Trading Floor Personnel Registration Fee, is a reasonable amount to charge stock execution clerks for the ability to perform this service on the options floor. In addition, the monies received as a result of the $500 monthly fee should help raise revenue for the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

involves buying or selling the underlying security (generally called "stock" in this proposal). *See* Exchange Rule 1066(c).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A written comment was received by the Exchange.[12]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2) thereunder,[14] in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx-2007–48 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–Phlx-2007–48. 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 Phlx. 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–Phlx-2007–48 and should be submitted on or before September 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15935 Filed 8–14–07; 8:45 am]

BILLING CODE 8010–01–P

[12] A written comment in the form of an e-mail message from Larry Johnson at Wedbush Morgan Securities was sent to Kevin Kennedy (an Exchange employee) on May 29, 2007. In the e-mail message, Mr. Johnson stated, in part, that the $500 fee was "in no way an impediment for us." This written comment was received in connection with various discussions between Exchange staff and Wedbush, which related in part to what types of activity (including stock execution business) would be allowed on the Exchange's options floor due to the fact that the Exchange was closing its physical equity trading floor and migrating to XLE, the Exchange's new equity trading system. The Exchange was addressing this issue, in general, in order to notify former equity floor members who may have been considering establishing some form of operation on the Exchange's options trading floor and possibly connecting to XLE.

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying

the public that the agency has made such a submission.

DATES: Submit comments on or before September 14, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Entrepreneurial Development Management Information System (EDMIS) Counseling Information form & Management Training Report.

No's: 641 & 888.

Frequency: On Occasion.

Description of Respondents: New established and prospective small business.

Responses: 481,925.

Annual Burden: 137,390.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–15970 Filed 8–14–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 39 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2008 subject to the availability of funds. Seventeen states do not participate in the EO 12372 process therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Greg Panichello, State Director, Salt Lake Community College, 9750 South 300 West, Sandy, UT 84070, (801) 957–3493.

Mr. Herbert Thweatt, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, 011–684–699–4830.

Mr. John Lenti, State Director, University of South Carolina, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3864.

Mr. Henry Turner, Executive Director, Howard University, 2600 6th St., NW., Room 125, Washington, DC 20059, (202) 806–1550.

Mr. Jerry Cartwright, State Director, University of West Florida, 401 East Chase Street, Suite 100, Pensacola, FL 32502, (850) 473–7800.

Mr. Allan Adams, State Director, University of Georgia, 1180 East Broad Street, Athens, GA 30602, (706) 542–6762.

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 308 Kamehameha Avenue, Suite 201, Hilo, HI 96720, (808) 974–7515.

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717.

Mr. Jeffrey Heinzmann, State Director, Economic Development Council, One North Capitol, Suite 900, Indianapolis, IN 46204, (317) 234–2086.

Mr. John Massaua, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420.

Mr. Brett Rogers, State Director, Washington State University, 534 East Trent Avenue, Spokane, WA 99210–1495, (509) 358–7765.

Ms. Bon Wikenheiser, State Director, University of North Dakota, 1600 East Century Avenue, Suite 2, Bismarck, ND 58502, (701) 328–5375.

Mr. Casey Jeszenka, SBDC Director, University of Guam, P.O. Box 5061—U.O.G. Station, Mangilao, GU 96923, (671) 735–2590.

Mr. John Hemmingstad, State Director, University of South Dakota, 414 East Clark Street, Patterson Hall, Vermillion, SD 57069, (605) 677–6256.

Ms. Debra Malewicki, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–8860.

Mr. Dan Ripke, Regional Director, California State University, Chico, 400 West First Street, Chico, CA 95929, (530) 898–4598.

Ms. Kristin Johnson, Regional Director, Humboldt State University, Office of Economic & Community Dev., 1 Harpst Street, 2006A, Siemens Hall, Arcata, CA 95521, (707) 445–9720 x317.

Ms. Vi Pham, Regional Director, California State University, Fullerton, 800 North State College Blvd., Fullerton, CA 92834, (714) 278–2719.

Ms. Debbie Trujillo, Regional Director, Southwestern Community College District, 900 Otey Lakes Road, Chula Vista, CA 91910, (619) 482–6388.

Mr. Lyle Wright, Regional Director, University of California, Merced, 550 East Shaw, Suite 105A, Fresno, CA 93710, (209) 288–4368.

Ms. Sheneui Sloan, Acting Regional Director, Long Beach Community College, 3950 Paramount Blvd., Suite 101, Lakewood, CA 90712, (562) 938–5004.

FOR FURTHER INFORMATION CONTACT: Antonio Doss, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with the SBA. SBDCs operate on the basis of a state plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must

match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) increase economic growth;

(c) assist more small businesses; and

(d) broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) maintain lists of private consultants at each service center.

Dated: July 30, 2007.

Antonio Doss,

Associate Administrator, for Small Business Development Centers.

[FR Doc. E7–15972 Filed 8–14–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5891]

Culturally Significant Objects Imported for Exhibition Determinations: "Baksy Krater"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Baksy Krater", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects, which will include their conservation and reconstruction, at The J. Paul Getty Museum at the Getty Villa, Malibu, California, from on or about August 29, 2007, until on or about July 30, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 7, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–16021 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5890]

Culturally Significant Objects Imported for Exhibition Determinations: "Gabriel de Saint-Aubin (1724–1780)"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Gabriel de Saint-Aubin (1724–1780)", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about October 30, 2007, until on or about January 27, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 8, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–16025 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5889]

Culturally Significant Objects Imported for Exhibition Determinations: "Legacy: Spain and the United States in the Age of Revolution, 1763–1848"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.

2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Legacy: Spain and the United States in the Age of Revolution, 1763–1848", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Portrait Gallery, Smithsonian Institution, Washington, DC, from on or about September 27, 2007, until on or about February 10, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 6, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–16051 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5892]

Culturally Significant Objects Imported for Exhibition Determinations: "Tapestry in the Baroque: Threads of Splendor"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Tapestry in the Baroque: Threads of Splendor", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about October 15, 2007, until on or about January 6, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 7, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–16045 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5893]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Designation of the Fatah al-Islam

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the organization known as Fatah al-Islam has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 9, 2007.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E7–16086 Filed 8–14–07; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Completion and Operation of Watts Bar Nuclear Plant Unit 2, Rhea County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. On August 1, 2007, the TVA Board of Directors decided to adopt the preferred alternative identified in TVA's Final Supplemental Environmental Impact Statement (FSEIS), Completion and Operation of Watts Bar Nuclear Plant Unit 2, Rhea County, Tennessee.

A Notice of Availability of the FSEIS was published in the **Federal Register** on June 23, 2007. Under the selected alternative, TVA has decided to meet the need for additional baseload capacity on the TVA system and maximize the use of existing assets by completing and operating Watts Bar Nuclear Plant (WBN) Unit 2. The unit would be completed as originally designed incorporating additional modifications made to its sister unit, WBN Unit 1, which has been operating since 1996. No expansion of the existing site footprint would be required to complete construction of Unit 2. TVA has prepared the FSEIS to update the extensive environmental record pertinent to the proposed action. In addition to the FSEIS, TVA conducted a detailed scoping, estimating, and planning (DSEP) study. TVA used information from the DSEP and the FSEIS to make the decision to complete construction and to operate Unit 2.

FOR FURTHER INFORMATION CONTACT: Bruce L. Yeager, NEPA Policy Program Manager, Environmental Stewardship and Policy, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B,

Knoxville, Tennessee 37902–1499; telephone (865) 632–8051 or e-mail *blyeager@tva.gov*.

SUPPLEMENTARY INFORMATION: The FSEIS for completion and operation of WBN Unit 2 supplements the original 1972 TVA EIS titled "Final Environmental Statement, Watts Bar Nuclear Plant Units 1 and 2" and the "Final Statement Related to the Operation of Watts Bar Nuclear Plant Units 1 and 2, Supplement No. 1," (NRC 1995b), which TVA adopted on July 10, 1995. Where pertinent, the FSEIS incorporates by reference, utilizes, tiers from, and updates information from the substantial previous environmental record prepared for actions related to the construction and operation of WBN, including updating the need for power analysis.

Alternatives Considered

In the 1972 Final Environmental Statement (FES) for Watts Bar Units 1 and 2, TVA considered a number of alternatives to constructing and operating WBN, including the No Action alternative. TVA is proposing to complete WBN Unit 2 as originally designed except for modifications consistent with those made to Unit 1. Consistent with applicable regulations, the FSEIS also tiers off of Energy Vision 2020—An Integrated Resource Management Plan (IRP) and Final Environmental Impact Statement ("IRP" EIS) (TVA 1995); the Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water reactor (DOE 1999); and the Reservoir Operations Study Final Programmatic Environmental Impact Statement (TVA 2004), and incorporates by reference the balance of the environmental record pertinent to WBN. The IRP EIS analyzed a substantial number of energy resource alternatives, including energy efficiency improvements and demand side management.

Environmental Consequences

The environmental consequences of constructing and operating WBN were addressed comprehensively in the 1972 FES for WBN Units 1 and 2. Subsequent environmental reviews by TVA and the NRC have updated that analysis. By 1996 when the construction of Unit 1 was complete, most of the construction effects had already occurred. Unit 2 would use structures that already exist and most of the work required to complete Unit 2 would occur inside of those buildings. Disturbances proposed for the construction of new support facilities would be within the current plant footprint. TVA would use standard construction best management practices to control minor construction impacts to air and water from dust, sedimentation, and noise. Where needed, the FSEIS further updated information and analyses in the following areas: Surface water; groundwater; aquatic ecology; threatened and endangered species; wetlands; natural areas; cultural resources; socioeconomic, environmental justice and land use impacts; floodplains and flood risk; seismic effects; climatology and meteorology; nuclear plant safety and security; radiological effects; radioactive waste; spent fuel storage; transportation of radioactive materials, and decommissioning.

The analyses conducted for the FSEIS indicate that no significant impacts would be expected as a result of completing and operating WBN Unit 2. The oversight of permitting agencies, such as the Tennessee Department of Environment and Conservation, will help further safeguard the environment from unacceptable environmental impacts. No effects to federally-listed species would occur. The analysis acknowledges that there will be both beneficial and adverse impacts to local community services from completing Unit 2, largely associated with the effects on social services during the construction process.

These findings are primarily a result of the fact that: (1) WBN Unit 1 is already an existing facility operating under an NRC license; (2) WBN Unit 2 is substantially complete; (3) the environmental footprint of the proposed action is confined to that of the existing plant (primarily within existing structures of the plant); and (4) the proposed addition of WBN Unit 2 results in relatively minor changes to ongoing operations of WBN that have the potential for environmental effects.

Decision

On August 1, 2007, the TVA Board of Directors decided to adopt the preferred alternative to complete and operate WBN Unit 2. This decision took into account environmental considerations together with economic and technical aspects of the project. Proceeding with completion and operation of WBN Unit 2 is the best decision for TVA and the Tennessee Valley in terms of power supply, power price, generation mix, return on investment, use of existing assets, and avoidance of environmental impacts. This decision has the three-fold benefits of assuring future power supplies without the environmental effects resulting from operation of fossil fuel generating plants (including increased emissions), avoiding the even larger capital outlays associated with totally new construction, and avoiding the environmental impacts resulting from siting and construction of new power generating facilities elsewhere. The FSEIS concluded that WBN Unit 2 can be completed and operated without significant, adverse impacts on the environment.

Environmentally Preferred Alternative

On May 31, 2007, the TVA Board endorsed enhanced reliance on renewable energy resources, demand side management (energy conservation), and energy efficiency to help meet the growing demand for electricity from the TVA system. These energy resource options were evaluated in TVA's IRP EIS. TVA is implementing a number of these resource options and expects to rely more heavily on such options in the future. Energy conservation and improved energy efficiency typically would have lesser environmental impacts than completing and operating a nuclear plant. They would not, however, offset the near-term need for more baseload generation that would be met by completing and operating WBN Unit 2.

Accordingly, TVA has concluded that the preferred alternative is also the environmentally preferable alternative. This alternative has the benefits of assuring future power supplies without relying upon fossil fuel generation and its associated environmental impacts, and avoiding the greater environmental impacts resulting from siting and construction of new power generating facilities elsewhere.

Environmental Commitments

In the FSEIS, TVA has identified two measures that would be implemented during construction of WBN Unit 2 to address potential socio-economic impacts. TVA will designate certain counties as impacted by the construction process so that they would become eligible for a supplemental allocation from TVA's tax equivalent payments under Tennessee law. These funds could be used by counties and local governmental to address impacts on local services and infrastructure. A part of the DSEP, TVA conducted a labor study of the potential construction workforce. TVA will also provide information from this study to officials in the impacted counties. This information should help with local planning to better accommodate the anticipated temporary population growth.

Dated: August 3, 2007.

William R. McCollum, Jr.,

Chief Operating Officer.

[FR Doc. E7–15955 Filed 8–14–07; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33.63–1, Turbine Engine Vibration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 33.63–1, Turbine Engine Vibration. This advisory circular (AC) provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate compliance with the vibration requirements of § 33.63 of Title 14 of the Code of Federal Regulations (14 CFR part 33).

DATES: The Engine and Propeller Directorate issued AC 33.63–1 on July 25, 2007.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: Dorina Mihail, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7153; fax: (781) 238–7199; e-mail: *dorina.mihail@faa.gov.*

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

How to obtain copies: A paper copy of AC 33.63–1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/regulations_policies* (then click on "Advisory Circulars").

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts on July 25, 2007.

Peter A. White,

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

[FR Doc. 07–3964 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 2007, vol. 72, no. 105, page 30659. The information is being used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate.

DATES: Please submit comments by September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Verification of Authenticity of Foreign License, Rating and Medical Certification.

Type of Request: New collection.

OMB Control Number: 2120–XXXX.

Forms(s): 8060–71.

Affected Public: An estimated 5,400 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 900 hours annually.

Abstract: The information is being used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign licenses wishing to obtain a U.S. certificate.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3965 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Airports Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airports Grants Program.

Type of Request: Extension of an approved collection.

OMB Control Number: 2120–0569.

Form(s): Forms 5100–100, 5100–101, 5100–108, 5100–126, 5100–127, 5370–1.

Affected Public: A total of 1,950 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 8.5 hours per response.

Estimated Annual Burden Hours: An estimated 86,028 hours annually.

Abstract: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal Funds, and ensure project accomplishments.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3966 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Aircraft Assembly Placard Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Per this rule, aircraft operators need to add a statement to the seat back pocket card stating the country of origin of final assembly of the aircraft.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aircraft Assembly Placard Requirements.

Type of Request: Extension of an approved collection.

OMB Control Number: 2120–0691.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 150 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1 minute per response.

Estimated Annual Burden Hours: An estimated 13,313 hours annually.

Abstract: This rule was mandated by an act of Congress. Aircraft operators that are required to provide emergency evacuation procedures in the form of a seat-back pocket card are affected by this rule. These operators need to add a statement to the seat back pocket card stating the country of origin of final assembly of the aircraft.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3967 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; information for the Prevention of Aircraft Collisions on Runways at Towered Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Feedback from surveys will be used in the prevention of runway collisions and in the medication of the severity and frequency of runway incursions.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Adminstration (FAA)

Title: Information for the Prevention of Aircraft Collisions on Runways at Towered Airports.

Type of Request: Extension of an approved collection.

OMB Control Number: 2120–0692.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 10,000 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 1,670 hours annually.

Abstract: Runway incursions are at risk to the public traveling in aircraft. FAA has been concentrating on this issue for a decade and progress has been elusive, in part because of a lack of feedback from people working and flying on the runways in the NAS. Feedback from surveys will be used in the prevention of runway collisions and in the medication of the severity and frequency of runway incursions.

ADDRESS: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3968 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information collection is used to allocate slots and maintain accurate records of slot transfers at High Density Traffic Airports.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: High Density Traffic Airports; Slot Allocation and Transfer Methods.

Type of Request: Extension of an approved collection.

OMB Control Number: 2120–0524.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 102 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 3,037 hours annually.

Abstract: This information collection is used to allocate slots and maintain accurate records of slot transfers at High Density Traffic Airports. The information is provided by air carriers and commuter operators or other persons holding a slot at High Density Airports.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AEA–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3969 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Physiological Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This report is necessary to establish qualifications of eligibility to receive voluntary psychological training with the U.S. Air Force and will be used as proper evidence of training.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Physiological Training.

Type of Request: Extension of an approved collection

OMB Control Number: 2120–0101.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 5,500 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 8 minutes per response.

Estimated Annual Burden Hours: An estimated 733 hours annually.

Abstract: This report is necessary to establish qualifications of eligibility to receive voluntary psychological training with the U.S. Air Force and will be used as proper evidence of training. The information is collected from pilots and crewmembers for application to receive voluntary training.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3970 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification: Mechanics, Repairmen, Parachute Riggers FAR–65

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Title 49 U.S.C. Sections 47702 and 44703 authorize the issuance of airman certificates. FAR part 65 prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Mechanics, Repairmen, Parachute Riggers FAR–65.

Type of Request: Extension of an approved collection.

OMB Control Number: 2120–0022.

Forms(s): Forms 8610–1, 8610–2.

Affected Public: A total of 38,441 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 50 minutes per response.

Estimated Annual Burden Hours: An estimated 33,028 hours annually.

Abstract: Title 49 U.S.C. Sections 44702 and 44703 authorize the issuance of airman certificates. FAR part 65 prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations. The information collected shows applicant eligibility for certification.

Addresses: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3971 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Maintenance, Preventive Maintenance, Rebuilding, and Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft and aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals.

DATES: Please submit comments by October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Type of Request: Extension of an approved collection.

OMB Control Number: 2120–0020.

Forms(s): Form 337.

Affected Public: A total of 87,769 respondents.

Frequency: The information is collected as needed.

Estimated Average Burden per Response: Approximately 6.5 hours per response.

Estimated Annual Burden Hours: An estimated 2,374,434 hours annually.

Abstract: FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft and aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform maintenance.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3972 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting, Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

DATES: The meeting will be held September 6–7, 2007, at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 212 meeting. The agenda will include:

- *September 6:*
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Secretary Selection, Agenda Overview).
- FAA Issue Table—Outstanding Actions.
- NSF–Radio Astronomy Issue.
- DO–262—Reports from Drafting Groups; Review of Drafts.
- Revised Outline of DO–262 Normative Appendix.
- Overview.
- Avionics Subsystem Definitions/ Overall Requirements; Avionics Design and Performance.
- Antenna.
- Transceiver.
- Avionics Equipment Performance Verification.
- Aircraft Installation Design Requirements.
- Requirements Mapping.
- DO–270.
- Discussion of Requirements for Normative Appendix.
- Review of DO–270 and ICAO Validation Report Mapping.
- Inmarsat-Iridium Interference Analysis.
- *September 7:*
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 6, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–3973 Filed 8–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 450X)]

BNSF Railway Company—Abandonment Exemption—in Clay County, MO

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.06-mile line of railroad between milepost 199.07 and milepost 200.13, in Kearney, in Clay County, MO (the line). The line traverses United States Postal Service Zip Code 64060.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 14, 2007, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 27, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 4, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 20, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by August 15, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 6, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–15634 Filed 8–14–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The earliest this transaction may be consummated is September 14, 2007. BNSF confirmed this date by facsimile on August 6, 2007.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

Corrections

Federal Register
Vol. 72, No. 157
Wednesday, August 15, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Investor Education and Assistance, Washington, DC 20549-0213.

Extension: Form N-8F, SEC File No. 270-136, OMB Control No. 3235-0157.

Correction

In notice document E7–14563 beginning on page 41531 in the issue of July 30, 2007, make the following correction:

On page 41531, in the third column, the document heading and the next three lines are corrected to read as set forth above.

[FR Doc. Z7–14563 Filed 8–14–07; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: US Securities and Exchange Commission, Office of Investor Education and Assistance, Washington DC 20549-0213.

Extension: Rule 301 and Forms ATS and ATS-R, SEC File No. 270-451, OMB No. 3235-0509.

Correction

In notice document E7–14845 appearing on page 42139 in the issue of Wednesday August 1, 2007, make the following correction:

On page 42139, in the first column, the document heading and the next seven lines corrected to read as set forth above.

[FR Doc. Z7–14845 Filed 8–14–07; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Assistance, Washington, DC 20549-0213.

Extension: Rule 13e-3 (Schedule 13E-3), OMB Control No. 3235-0007, SEC File No. 270-1.

Correction

In notice document E7–15181 beginning on page 43670 in the issue of Monday, August 6, 2007, make the following correction:

On page 43670, in the second column, the document heading is corrected to read as set forth above.

[FR Doc. Z7–15181 Filed 8–14–07; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATIION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28853; Directorate Identifier 2006–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

Correction

In proposed rule document 07–3774 beginning on page 43199 in the issue of Friday, August 3, 2007, make the following corrections:

§ 39.13 [Corrected]

(1) On page 43201, in the third column, in § 39.13(f)(3)(iii), in the ninth line, "5710022–02–2" should read "571022–02–2".

(2) On the same page, in the same column, in the same section, in the tenth line "A300–60" should read "A300–600".

(3) On page 43202, in the first column, in § 39.13(h), in the first line "MCAIEASA" should read "MCA IEASA "

[FR Doc. C7–3774 Filed 8–14–07; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 15, 2007

Part II

Department of Housing and Urban Development

24 CFR Part 891

Project Design and Cost Standards for the Section 202 and Section 811 Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR–5097–P–01]

RIN 2502–AI48

Project Design and Cost Standards for the Section 202 and Section 811 Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations that govern the project design and cost standards for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Persons with Disabilities programs. Under these programs, project sponsors are prohibited from using HUD funds for certain project amenities, including swimming pools, private balconies, dishwashers, and washers and dryers. This rule proposes to remove an item from the list of restricted amenities. Specifically, this rule would allow project sponsors to use HUD funds for dishwashers in individual supportive housing units for the elderly and independent living projects for persons with disabilities. In addition, the proposed rule would clarify the applicability of the project design and cost standards to Section 811 group homes.

DATES: *Comment Due Date:* October 15, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically so that HUD can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Yvonne Jefferson, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6154, Washington, DC 20410–8000, telephone number (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of the Housing Act of 1959, as amended under section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q) and Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), authorizes HUD to establish programs to provide assistance to expand the supply of housing with supportive services for the elderly and persons with disabilities. HUD's regulations that establish the Section 202 Supportive Housing for the Elderly program (Section 202 program) and HUD's Section 811 Supportive Housing for Persons with Disabilities program (Section 811 program) are set forth at 24 CFR part 891.

Under the Section 202 program, HUD provides assistance to expand the supply of housing with supportive services for the elderly. Specifically, HUD provides capital advances to eligible private, nonprofit sponsors to finance the development of rental housing with supportive services for the elderly. Similarly, the Section 811 program provides assistance to expand the supply of housing with the availability of supportive services for persons with disabilities. Again, HUD provides capital advances to eligible nonprofit sponsors, which have a Section 501(c)(3) tax exemption ruling, to finance the development of rental housing with the availability of supportive services for persons with disabilities.

Section 891.120 establishes the project design and cost standards for Section 202 and Section 811 projects. Projects must be modest in design and certain amenities are not eligible for HUD capital advance or project rental assistance contract (PRAC) funds. Among the amenities for which HUD funding is restricted are private balconies and decks, atriums, bowling alleys, swimming pools, saunas, Jacuzzis, dishwashers, trash compactors, and washers and dryers. Section 202 and 811 project sponsors may include these amenities, but must not use HUD funds for the purchase of an ineligible amenity or the continued operating costs associated with the ineligible amenity.

II. This Proposed Rule

This proposed rule would revise HUD's regulations that govern the project design and cost standards for HUD's Section 202 and Section 811 programs. Although HUD believes that projects must be modest in design, HUD acknowledges that many items once considered "excess amenities" are standard in today's housing market. HUD is also aware that certain amenities, such as dishwashers, are necessary to maintain the quality of life for elderly and disabled residents. Providing the elderly and persons with disabilities with the necessary appliances to assist with cleaning of dishes would help promote healthy living conditions, and assist independent living.

This rule proposes to remove dishwashers from the list of restricted amenities. Specifically, this rule would amend 24 CFR 891.120(c) to allow project sponsors to use HUD funds for dishwashers in independent living units occupied by the elderly and persons with disabilities. In addition, HUD proposes to clarify the applicability of the regulations at 24 CFR 891.120 to Section 811 group homes. Currently, the provisions in § 891.120(c) do not address Section 811 group homes specifically; therefore, some confusion exists concerning eligible amenities in Section 811 group homes.

III. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would allow Section 202 and Section 811 funds to be used to include a certain household appliance in supportive housing units for the elderly and persons with disabilities. The regulatory change does not revise or establish new binding requirements on project sponsors or owners. Rather, this proposed rule updates HUD's regulations to authorize the use of Section 202 and Section 811 funds for an amenity standard in today's housing market. The change will assist the elderly and persons with disabilities to live independently. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandate on state, local, or tribal government, or the private sector within the meaning of UMRA.

Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments, and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance (CFDA)

The CFDA number for the Section 202 program is 14.157 and the CFDA number for the Section 811 program is 14.181.

List of Subjects in 24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 891 to read as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

1. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

2. Revise § 891.120(c) to read as follows:

§ 891.120 Project design and cost standards.

* * * * *

(c) *Restrictions on amenities.* Projects must be modest in design. In individual units in supportive housing for the elderly and in independent living facilities for persons with disabilities, amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, Jacuzzis, trash compactors, washers, and dryers. However, HUD funding is eligible to pay for washers and dryers in group homes for persons with disabilities. Sponsors may include certain excess amenities but they must pay for them from sources other than the Section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the Section 202 or 811 project rental assistance contract.

* * * * *

Dated: July 13, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–15962 Filed 8–14–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
August 15, 2007

Part III

Department of Housing and Urban Development

24 CFR Part 990

Public Housing Operating Fund Program; Revised Transition Funding Schedule for Calendar Years 2007 Through 2012; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket Number FR–5105–F–02]

RIN 2577–AC72

Public Housing Operating Fund Program; Revised Transition Funding Schedule for Calendar Years 2007 Through 2012

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; HUD.

ACTION: Final rule.

SUMMARY: This final rule modifies HUD's regulations for transition funding under the Operating Fund Program. The Operating Fund Program, as revised by a September 19, 2005, final rule, adopted a new formula for determining the payment of operating subsidy to public housing agencies (PHAs). Transition funding is based on the difference in subsidy levels between the new formula and the formula in effect prior to the implementation of the September 19, 2005, final rule. As a result of the new formula, PHAs may experience either an increase or decrease in the amount of funding that they receive. This final rule revises the schedule for those PHAs that will experience a decline in funding, by extending the transition phase-in period an additional year. This final rule follows publication of the two proposed rules published on November 24, 2006, and takes into consideration the public comments received on the proposed rules. With the exception of a technical change, this final rule adopts the proposed regulatory changes without change.

DATES: *Effective Date:* September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hanson, Deputy Assistant Secretary, Departmental Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2000, Washington, DC 20410; telephone number (202) 475–7949 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The September 19, 2005, Final Rule

On September 19, 2005, at 70 FR 54984, HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990 to provide a new formula for distributing operating subsidy to PHAs and to establish requirements for PHAs to convert to asset management. More detailed information about this rule can be found in the preamble to the September 19, 2005, final rule. Additionally, on October 24, 2005, at 70 FR 61366, HUD published a technical correction (Correction Notice) correcting the September 19, 2005, final rule to provide that the revised allocation formula is to be implemented for calendar year 2007, and adjusting the related dates specified in the rule to reflect the corrected implementation date.

In accordance with both the September 19, 2005, final rule and the Correction Notice, the new Operating Fund formula for determining public housing operating subsidies goes into effect in calendar year 2007. As a result of the new formula, PHAs may experience either an increase or decrease in the amount of funding that they receive. PHAs that will experience a gain under the new formula would receive 50 percent of their gain in calendar year 2007 and the full amount of the gain in calendar year 2008.

For PHAs experiencing a decrease in operating subsidy as a result of the new formula, the current regulations limit that reduction to 24 percent of the difference between the old and new funding levels in the first year following implementation. In each of the following three years the subsidy will be reduced by 43, 62, and 81 percent of the difference, respectively. In the last year of the phase-in PHAs will be subject to the full decrease. The phase-in of the reduction in subsidy is designed to lessen the impact of the decline in funding, assisting PHAs with the conversion to asset management while continuing PHAs' ability to perform necessary functions and provide services.

B. The November 24, 2006, Proposed Rules

On November 24, 2006, HUD published two proposed rules for public comment to revise HUD's regulations for transition funding under the Operating Fund Program.

For PHAs that experience a decline, the first rule published on November 24, 2006 (71 FR 68408), proposed to cap the loss at 5 percent of the difference between the old and the new funding levels for calendar year 2007. As explained in the preamble to the proposed rule, the transition phase-in schedule codified in the part 990 regulations is the product of negotiated rulemaking. The negotiated rulemaking committee discussed the phase-in of reductions at length and agreed upon the schedule established in the September 19, 2005, final rule. Increased utility costs in public housing have reduced funding levels relative to total eligibility. Implementation of a difference of 24 percent at this time, given current utility costs, would in effect result in subsidy losses greater than the agreed upon 24 percent.

The second rule published on November 24, 2006 (71 FR 68404), proposed to modify the transition phase-in schedule for the years following calendar year 2007 to reflect the one-time 5 percent cap. The proposed transition funding schedule would result in a 24 percent reduction in calendar year 2008, a 43 percent reduction in calendar year 2009, a 62 percent reduction in calendar year 2010, and an 81 percent reduction in calendar year 2011. The phase-in would conclude with the full reduction being experienced in calendar year 2012.

Assuming no change in appropriations, HUD estimates that PHAs experiencing a subsidy increase under the new formula will have their subsidy reduced by approximately 0.7 percent as a result of the extended transition schedule. The 0.7 percent reduction is constant for each year of the transition funding schedule, but will end in year 2012 upon completion of the formula phase-in. While these PHAs have also experienced an increase in utility costs, the overall effect of the two November 24, 2006, proposed rules would be to more closely match the agreements reached during the negotiated rulemaking process.

These proposed revisions to the transition phase-in schedule were intended to provide PHAs experiencing a reduction in operating subsidy with adequate time to plan and prepare their budget and management operations. All other provisions of the September 19, 2005, final rule and the Correction Notice remain unchanged and in effect.

II. This Final Rule

This final rule follows publication of the two November 24, 2006, proposed rules and takes into consideration the public comments received on the proposed rules. Given the similarity in the subject matter of the two proposed rules, and of the issues raised by the public comments on both proposed

rules, HUD has decided to follow publication of the proposed rules with this single consolidated final rule.

The public comment period on the first proposed rule closed on December 26, 2006. HUD received six public comments. Comments were received from individual PHAs, organizations representing PHAs, and a consulting firm. During the public comment period on the second proposed rule, which closed on January 23, 2007, HUD received 10 public comments. The comments were received from individual PHAs, organizations representing PHAs, consulting firms, and a labor union. Comments generally supported the proposed rules, and HUD has carefully considered the issues raised. As explained more fully in section III of this preamble, and to address confusion expressed by the commenters on the proposed rule, HUD has updated the table at § 990.230(e) regarding "stop loss" application due dates to reflect the most recent information posted on HUD's Web site. With the exception of this technical change, HUD has adopted the two proposed rules without change.

III. Discussion of Public Comments Received on the November 24, 2006, Proposed Rules

Comment: Support for proposed rules. The majority of commenters wrote in support of the two November 24, 2006, proposed rules. The commenters wrote that the proposed rules avoid the possible adverse consequences of the currently codified transition funding schedule, which might have necessitated the laying off of PHA staff and otherwise negatively impacting the ability of PHAs to provide safe and decent housing.

HUD Response. HUD appreciates the support expressed by the commenters. As noted, this final rule adopts the two proposed rules without substantive change.

Comment: Proposed rules will negatively impact historically underfunded PHAs. Several commenters opposed the proposed rules on the grounds that the "cost" of the revised transition funding schedule would be borne by those PHAs that have historically been underfunded. As noted above in this preamble, PHAs experiencing a subsidy increase under the new formula will have their subsidy reduced by approximately 0.7 percent as a result of the extended transition provision, assuming no change in appropriations.

HUD Response. HUD has not revised the rules in response to this comment. The commenter is correct in noting that the revised transition-funding schedule will result in a slight decrease in funding for those PHAs gaining under the new formula. However, as indicated above in this preamble, the overall effect of this final rule is to more closely match the agreements reached during the negotiated rulemaking process that developed the revised Operating Fund formula. The members of the negotiated rulemaking committee discussed the phase-in of subsidy reductions at length. Implementation of a difference of 24 percent at this time, given current utility costs, would in effect result in greater subsidy losses than those agreed upon by the committee members.

Comment: Losses should be permanently capped at 5 percent for small PHAs. Several commenters recommended that the losses for small PHAs be permanently capped at 5 percent.

HUD Response. HUD has not adopted the change requested by the commenter. The members of the negotiated rulemaking committee that developed the new Operating Fund formula represented a large cross-section of PHAs, both large and small and from different geographic regions. The committee agreed that the transition-funding schedule should not vary due to PHA size. However, in consideration of the unique organizational and administrative challenges faced by small PHAs, the part 990 regulations allow PHAs with less than 250 units to elect whether to convert to asset management (other PHAs are required to convert). HUD is also taking steps to facilitate the transition to asset management for those small PHAs that elect to convert. For example, on September 6, 2006, at 71 FR 52710, HUD published a notice providing interim guidance on implementation of asset management, which addressed the possible administrative and financial burdens for small PHAs of establishing a central office cost center (see 71 FR 52712).

Comment: Extension of first-year stop-loss application. As a result of a typographical error in the November 24, 2006, proposed rules, several commenters mistakenly read them as extending the first-year deadline for "stop-loss" applications. Specifically, the two proposed rules mistakenly proposed to revise the table codified at § 990.230(e) establishing the demonstration dates under the "stop loss provision" of the regulations. These commenters supported a "further extension" of the stop-loss application deadline.

HUD Response. As the preambles to both proposed rules made clear, and as several other commenters noted, the November 24, 2006, proposed rules were exclusively concerned with the transition funding schedule, and did not address the subject of stop-loss. However, HUD is aware that the table codified at § 990.230(e) is outdated, given the adjustments to the stop-loss application due dates (see Public and Indian Housing (PIH) Notice 2007–16, issued on June 18, 2007). To address the potential for confusion, HUD has taken the opportunity provided by this final rule to update the codified table. The updated table codified by this final rule is identical to the table contained in PIH Notice 2007–16, and HUD wishes to emphasize that this final rule does not modify the stop-loss application due dates. The due dates provided in PIH Notice 2007–16 remain in effect.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Environmental Impact

This rule provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to

notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would be subject to this rule are PHAs that administer public housing. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, this rule modifies the transition funding percentage for calendar year 2007 for PHAs experiencing a decline in funding between the old and new funding formulas, easing the transition for PHAs of all sizes. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.850.

List of Subjects in 24 CFR Part 990

Accounting, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 990 to read as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

■ 1. The authority citation for 24 CFR part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 335(d).

■ 2. Revise § 990.230(a), (b), (c), and (e) to read as follows:

§ 990.230 PHAs that will experience a subsidy reduction.

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

(1) 5 percent of the difference between the two funding levels in the first year of implementation of the formula contained in this part;

(2) 24 percent of the difference between the two funding levels in the second year of implementation of the formula contained in this part;

(3) 43 percent of the difference between the two levels in the third year of implementation of the formula contained in this part;

(4) 62 percent of the difference between the two levels in the fourth year of implementation of the formula contained in this part; and

(5) 81 percent of the difference between the two levels in the fifth year of implementation of the formula contained in this part.

(b) The full amount of the reduction in the operating subsidy level shall be realized in the sixth year of implementation of the formula contained in this part.

(c) For example, a PHA has a subsidy reduction from $1 million, under the formula in effect prior to implementation of the formula contained in this part, to $900,000, under the formula contained in this part using FY 2004 data. The difference would be calculated at $100,000 ($1 million − $900,000 = $100,000). In the first year, the subsidy reduction would be limited to $5,000 (5 percent of the difference). Thus, the PHA would receive an operating subsidy amount pursuant to this rule plus a transition-funding amount of $95,000 (the $100,000 difference between the two subsidy amounts minus the $5,000 reduction limit).

* * * * *

(e) The schedule for successful demonstration of conversion to asset management for discontinuation of PHA subsidy reduction is reflected in the table below:

STOP-LOSS DEMONSTRATION TIME LINE AND EFFECTIVE DATES

Demonstration date by	Applications due	Reduction stopped at	Reduction effective for
September 30, 2007	October 15, 2007	5 percent of the PUM difference	Calendar Year 2007 and thereafter.
April 1, 2008	April 15, 2008	24 percent of the PUM difference	Calendar Year 2008 and thereafter.
October 1, 2008	October 15, 2008	43 percent of the PUM difference	Calendar Year 2009 and thereafter.
October 1, 2009	October 15, 2009	62 percent of the PUM difference	Calendar Year 2010 and thereafter.
October 1, 2010	October 15, 2010	81 percent of the PUM difference	Calendar Year 2011 and thereafter.

* * * * *

Dated: August 2, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–15961 Filed 8–14–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
August 15, 2007

Part IV

The President

Executive Order 13442—Amending the Order of Succession in the Department of Homeland Security

Federal Register
Vol. 72, No. 157
Wednesday, August 15, 2007

Presidential Documents

Title 3—

The President

Executive Order 13442 of August 13, 2007

Amending the Order of Succession in the Department of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered as follows:

Section 1. Section 88 of Executive Order 13286 of February 28, 2003 ("Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security"), is amended by striking the text of such section in its entirety and inserting the following in lieu thereof:

"Sec. 88. Order of Succession.

Subject to the provisions of subsection (b) of this section, the officers named in subsection (a) of this section, in the order listed, shall act as, and perform the functions and duties of the office of, the Secretary of Homeland Security (Secretary), if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.* (Vacancies Act), during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

(a) Order of Succession.

"(i) Deputy Secretary of Homeland Security;

(ii) Under Secretary for National Protection and Programs;

(iii) Under Secretary for Management;

(iv) Assistant Secretary of Homeland Security (Policy);

(v) Under Secretary for Science and Technology;

(vi) General Counsel;

(vii) Assistant Secretary of Homeland Security (Transportation Security Administration);

(viii) Administrator of the Federal Emergency Management Agency;

(ix) Commissioner of U.S. Customs and Border Protection;

(x) Assistant Secretary of Homeland Security (U.S. Immigration and Customs Enforcement);

(xi) Director of U.S. Citizenship and Immigration Services;

(xii) Chief Financial Officer;

(xiii) Regional Administrator, Region V, Federal Emergency Management Agency;

(xiv) Regional Administrator, Region VI, Federal Emergency Management Agency;

(xv) Regional Administrator, Region VII, Federal Emergency Management Agency;

(xvi) Regional Administrator, Region IX, Federal Emergency Management Agency; and

(xvii) Regional Administrator, Region I, Federal Emergency Management Agency.

"(b) Exceptions.

(i) No individual who is serving in an office listed in subsection (a) in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this section.

(ii) Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the Vacancies Act, to depart from this order in designating an acting Secretary."

Sec. 2. Executive Order 13362 of November 29, 2004 ("Designation of Additional Officers for the Department of Homeland Security Order of Succession"), is hereby revoked.

THE WHITE HOUSE,
August 13, 2007.

[FR Doc. 07–4023
Filed 8–14–07; 8:52 am]
Billing code 3195–01–P

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H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

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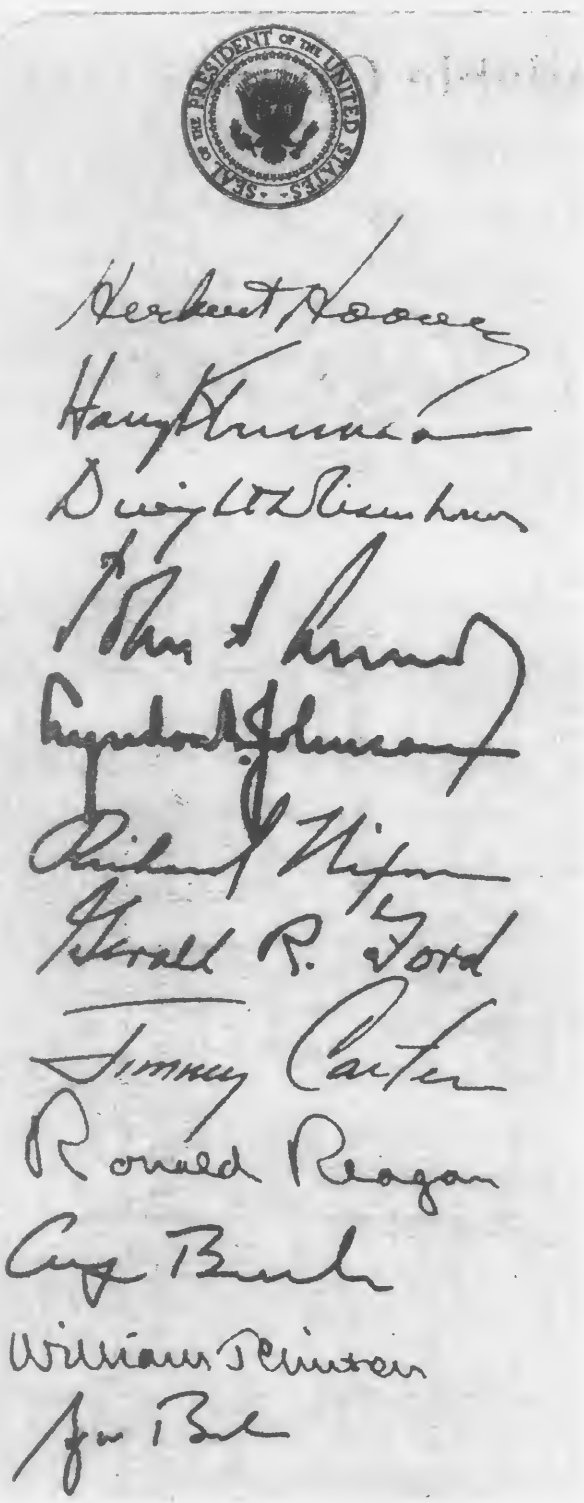

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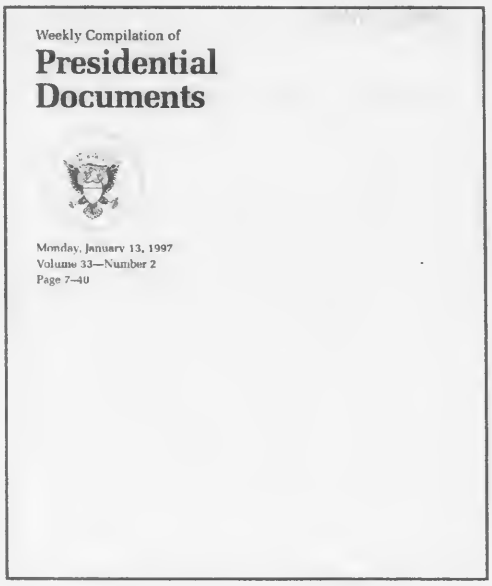

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