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

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

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

RESERVATIONS: (202) 741-6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AMS–FV–07–0088; FV07–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Citrus Administrative Committee (Committee) for the 2007–08 and subsequent fiscal periods from $0.008 to $0.0072 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos handled. The Committee locally administers the marketing order which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Assessments upon Florida citrus handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 31, 2007. Comments received by September 28, 2007, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *Doris.Jamieson@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges, grapefruit, tangerines, and tangelos grown in Florida, beginning August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2007–08 and subsequent fiscal periods from $0.008 per 4/5 bushel carton to $0.0072 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos grown in Florida.

The Florida citrus marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of oranges, grapefruit, tangerines, and tangelos. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent fiscal periods, the Committee recommended, and USDA approved, a decreased assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2007, and unanimously recommended 2007–08 expenditures of $275,000 and an assessment rate of $0.0072 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos grown in Florida. In

comparison, last year's budgeted expenditures were $241,000. The assessment rate of $0.0072 is $0.0008 lower than the rate currently in effect. This reduction was recommended because the Committee experienced an unanticipated increase in shipments for the 2006–07 fiscal period and had revenues greater than expenses. In addition, the industry has continued to recover from the hurricane damage sustained during the 2004–05 and 2005–06 seasons, which is expected to have a positive affect on total production.

The major expenditures recommended by the Committee for the 2007–08 fiscal year include $112,000 for salaries, $25,000 for Manifest Department-Florida Department of Agriculture and Customer Services (FDACS), $17,800 for retirement plan, and $14,550 for insurance and bonds. Budgeted expenses for these items in 2006–07 were $110,000, $25,000, $17,250, and $14,550, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, and tangelos. Florida citrus shipments for the year are estimated at 30 million 4/5 bushels which should provide $216,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently approximately $60,000) will be kept within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42(a).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2007–08 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 8,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 55 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2005–06 season was approximately $11.50 per 4/5-bushel carton, and total fresh shipments were approximately 29.1 million cartons. Using the average f.o.b. price, at least 70 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices reported by the National Agricultural Statistics Service, and the total number of Florida citrus producers, the average annual producer revenue is approximately $55,540. Therefore, the majority of handlers and producers of Florida citrus may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent fiscal periods from $0.008 to $0.0072 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos. The Committee unanimously recommended 2007–08 expenditures of $275,000 and an assessment rate of $0.0072 per 4/5 bushel carton. The assessment rate of $0.0072 is $0.0008 lower than the 2006–07 rate. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2007–08 season is estimated at 30 million 4/5 bushel cartons. Thus, the $0.0072 rate should provide $216,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2007–08 fiscal year include $112,000 for salaries, $25,000 for Manifest Department-FDACS, $17,800 for retirement plan, and $14,550 for insurance and bonds. Budgeted expenses for these items in 2006–07 were $110,000, $25,000, $17,250, and $14,550, respectively.

The reduction in the assessment rate was recommended by the Committee as a result of an unanticipated increase in shipments for the 2006–07 fiscal period, which produced revenues that were greater than expenses. In addition, the industry has continued to recover from the hurricane damage sustained during the 2004–05 and 2005–06 seasons, which is expected to have a positive impact on production.

The Committee reviewed and unanimously recommended 2007–08 expenditures of $275,000. Prior to arriving at this budget, the Committee considered information from various sources including the Committee's Budget Subcommittee. Alternative expenditure levels were discussed by this group, based on different estimates of assessable cartons and budget expenses. The assessment rate of $0.0072 per 4/5 bushel carton of assessable oranges, grapefruit, tangerines, and tangelos was then determined by dividing the total recommended budget by the quantity of assessable Florida citrus, estimated at 30 million 4/5 bushel cartons for the 2007–08 season, taking into consideration the availability of reserve funds and interest income. This is approximately $59,000 under anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2007–08 season could range between $1.83 and $9.76 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total producer revenue could range between .07 and .39 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may

be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2007–08 fiscal period begins August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida citrus handled during such fiscal period; (2) this action decreases the assessment rate for assessable Florida citrus beginning with the 2007–08 fiscal year; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2007, an assessment rate of $0.0072 per 4/5 bushel carton or equivalent is established for Florida citrus covered under the order.

Dated: July 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14621 Filed 7–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Docket No. : AMS–FV–07–0042; FV–07–702 IFR]

Mango Promotion, Research, and Information Order; Amendment to Term of Office Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends, on an interim basis, the term of office provision of the Mango Promotion, Research, and Information Order (Order) so that the term of office and term limit for the two wholesaler and/or retailer positions of the National Mango Board (Board) be the same as that of other members. Specifically, the amendment modifies the term of office from one year to three years, and modifies the term limit for these positions from a maximum of three consecutive one-year terms to a maximum of two consecutive three-year terms in order to conform to the requirements of the Commodity Promotion, Research, and Information Act of 1996 Act.

DATES: Effective date: July 31, 2007. Comments must be submitted on or before August 29, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244-Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; Fax: (202) 205–2800. Comments, which should reference the docket number, title of action, date, and page number of this issue of the **Federal Register**, will be made available for public inspection at the above address during regular business hours and may also be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, Marketing Specialist, or Sonia N. Jimenez, Chief, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244-Room 0634–S, Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free).

SUPPLEMENTARY INFORMATION: This rule is issued under the Mango Promotion, Research, and Information Order [7 CFR Part 1206]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the Department of Agriculture (Department) if they believe

that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has examined the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as having receipts of no more than $6,500,000 million. First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. There are approximately 5 first handlers and 55 importers subject to and assessed under the Order. The majority of these first handlers and importers would be considered small businesses while wholesalers and retailers would not.

First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the Order. Mangos that are exported out of the United States also are exempt from assessment. In addition, domestic producers, foreign producers, wholesalers, and retailers are not subject to or assessed under the Order, but such individuals are eligible to serve on the Board along with importers and first handlers.

The Mango Promotion, Research, and Information Order, which became effective November 4, 2004, is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425]. Pursuant to Section 515 (b) of the Act, the Order provides for the establishment of a Board comprised of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers. The Board is responsible for carrying out promotion, research, and information activities intended to develop, maintain, and increase the demand of mangos in the United States. Appointments to the Board are made by the Secretary of Agriculture from a slate of nominated candidates.

Section 515(b)(5) of the Act provides that members and alternates of a board shall serve three-year terms of office and may serve a maximum of two consecutive three-year terms, except members and alternates appointed to the initial Board may serve terms of two, three, or four years. Currently the Order states that the importer, first handler, domestic producers, and foreign producers each may serve a three-year term of office and may serve a maximum of two consecutive three-year terms, except members appointed to the initial Board serve staggered terms of two, three and four years. However, the Order provides one-year terms of office for wholesaler and/or retailer members, and such members may serve a maximum of three consecutive one-year terms.

At its February 2007 meeting, the Board reviewed the term of office for the two wholesaler and/or retailer positions. After considerable discussion and review of alternatives, the Board approved a proposal for recommendation to the Department to modify from a one year to a two year term of office for the wholesaler and/or retailer positions. Upon review of the Board's proposal, the Department determined that the current term of office provision for the two wholesaler and/or retailer positions was not in conformance with the Act. Accordingly, this rule modifies the Order's term of office provision to provide for wholesaler and/or retailer positions terms of three years with a maximum of two consecutive three-year terms.

The amendment will bring the Order in conformance with the Act. Additionally, the overall impact of the amendment will be favorable for first handlers and importers because the amendment will provide greater Board continuity, align the wholesaler and/or retailer positions terms of office with other Board positions, and reduce the administrative burden of conducting nominations on an annual basis for these positions.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581–0093.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Background

The Order became effective November 3, 2004, and is authorized under the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425], and is administered by the Board. The Order provides for a 20-member Board consisting of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers.

Under the Order, the Board administers a nationally coordinated program of promotion, research, and information designed to strengthen the position of mangos in the marketplace and to develop, maintain, and expand the demand for mangos in the United States. The program is financed by an assessment of ½ cent per pound on first handlers and importers who market or import 500,000 pounds or more of mangos annually. Under the Order, first handlers remit assessments directly to the Board, and assessments paid by importers are collected and remitted by the United States Customs Service.

Section 515(b)(5) of the Act provides that members and alternates of a board shall serve three-year terms of office and may serve a maximum of two consecutive three-year terms, except members and alternates appointed to the initial board may serve terms of two, three, or four years. Currently, with the exception of the initial Board, the Order provides a three-year term of office for first handler, importer, domestic producer, and foreign producer members, and these members may serve a maximum of two consecutive three-year terms. First handlers, importers, domestic producers, and foreign producers who were appointed to the initial Board were assigned to serve staggered terms of office of two, three, and four years—ending December 31, 2007, 2008, 2009. Members serving an initial term of two or four years are eligible to serve a second term of three years. The terms of office for first handler, importer, domestic producer, and foreign producer positions are consistent with the Act.

For the two wholesaler and/or retailer Board positions, the Order currently

provides a one-year term of office and members may serve a maximum of three consecutive one-year terms. Wholesaler and/or retailer members appointed to the initial Board were appointed to serve a term of office of one year with the term ending December 31, 2007. The term of office and the term limit for the wholesaler and/or retailer positions are not in conformance with the Act. Thus, this rule will modify the Order to bring it in conformance with the Act. Also, the amendment will be favorable for first handlers and importers because the amendment will provide greater Board continuity, align the wholesaler and/or retailer positions terms of office with other Board positions, and reduce the administrative burden of conducting nominations on an annual basis for these positions.

Nominations and appointments to the Board are conducted pursuant to § 1206.30 establishment and membership, § 1206.31 nominations and appointments, and § 1206.32 term of office. Appointments to the Board are made by the Secretary of Agriculture from a slate of nominated candidates. Nominations for the importer, first handler, domestic producer, and foreign producer positions are made by the respective industry organizations or individuals. Nominations for the wholesaler and/or retailer positions are made by the Board. Nominations for Board positions for terms ending December 31, 2007, will be based on the amendment contained in this rule. The term of office for such appointments will commence January 1, 2008.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule will allow the upcoming nominations and appointments to be conducted based on the changes to the term of office provision of this rule. The new term of office begins on January 1, 2008. In addition and for the same reasons, a 30-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, reporting and recording, requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1206 is amended as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1206 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

■ 2. Section 1206.32 is revised to read as follows:

§ 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, foreign producer, and wholesaler/retailer members of the Board will be three years, and these members may serve a maximum of two consecutive three-year terms. When the Board is first established, the first handler, two importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and two foreign producers will be assigned initial terms of three years; and three importers, three foreign producers, and two wholesaler and/or retailer members will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

Dated: July 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14612 Filed 7–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1209 and 1210

[Doc. No. AMS–FV–07–0070; FV–07–704]

Mushroom Promotion, Research, and Consumer Information Order and Watermelon Research and Promotion Plan; Corrections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: The Agricultural Marketing Service (AMS) is making corrections to the Code of Federal Regulations (7 CFR part 1209 and 7 CFR part 1210) to reflect the modification of Harmonized Tariff Schedule (HTS) codes for imported mushrooms and watermelons by U.S. Customs and Border Protection. This document updates the HTS codes for the mentioned imported commodities in 7 CFR 1209.51(e)(3) and 7 CFR 1210.515(b).

DATES: Effective date: July 30, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel Rafael Manzoni, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0634–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, or e-mail *daniel.manzoni@usda.gov.*

SUPPLEMENTARY INFORMATION: This document provides for corrections to 7 CFR part 1209 and 7 CFR part 1210 to reflect changes to the HTS codes for imported mushrooms and watermelons.

List of Subjects

7 CFR Part 1209

Administrative practice and procedure, Advertising, Consumer information, Marketing Agreements, Mushroom promotion, Reporting and recordkeeping requirements.

7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

■ Accordingly, 7 CFR Part 1209 and CFR Part 1210 are corrected by making the following correcting amendments:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

■ 2. In § 1209.51, revise paragraph (e)(3) to read as follows:

§ 1209.51 Assessments.

* * * * *

(e) * * *

(3) The import assessment shall be uniformly applied to imported mushrooms that are identified by the numbers, 0709.51.01 and 0709.59 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

* * * * *

PART 1210—WATERMELON PROMOTION, RESEARCH, AND PROMOTION PLAN

■ 3. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916

■ 4. In § 1210.515 revise paragraph (b) to read as follows:

§ 1210.515 Levy of assessments.

* * * * *

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Scheudle of the United States of any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

* * * * *

Dated: July 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14615 Filed 7–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM362 Special Conditions No. 25–354–SC]

Special Conditions: Boeing Model 787–8 Airplane; Interaction of Systems and Structures, Electronic Flight Control System-Control Surface Awareness, High Intensity Radiated Fields (HIRF) Protection, Limit Engine Torque Loads for Sudden Engine Stoppage, and Design Roll Maneuver Requirement

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. These design features include electronic flight control systems and high bypass engines. These special conditions also pertain to the effects of such novel or unusual design features, such as effects on the structural performance of the airplane. Finally, these special conditions pertain to effects of certain conditions on these novel or unusual design features, such as the effects of high intensity radiated fields (HIRF). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. 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:* August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2138; facsimile (425) 227–1149.

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 "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. In addition, the FAA must 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.

Discussion of Novel or Unusual Design Features

The 787 will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions for the 787 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.

Most of these special conditions are identical or nearly identical to those previously required for type certification of the Model 777 series airplanes.

Most of these special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry. In the case of some of these requirements, a draft notice of proposed rulemaking has been prepared but no final rule has yet been promulgated.

Additional special conditions will be issued for other novel or unusual design features of the 787 in the near future.

1. Interaction of Systems and Structures

The 787 is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards. Special conditions are needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state.

These special conditions require that the airplane meet the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems

are fully operative. The special conditions also require that the airplane meet these requirements considering failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

2. Electronic Flight Control System: Control Surface Awareness

With a response-command type of flight control system and no direct coupling from cockpit controller to control surface, such as on the 787, the pilot is not aware of the actual surface deflection position during flight maneuvers. This feature of this design is novel and unusual when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions are meant to 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. Some unusual flight conditions, arising from atmospheric conditions or airplane or engine failures or both, may result in full or nearly full surface deflection. Unless the flight crew is made aware of excessive deflection or impending control surface deflection limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in a way that would cause loss of control or other unsafe handling or performance situations.

These special conditions require that suitable annunciation be provided to the flightcrew when a flight condition exists in which nearly full control surface deflection occurs. Suitability of such an annunciation must take into account that some pilot-demanded maneuvers, such as a rapid roll, are necessarily associated with intended full or nearly full control surface deflection. Simple alerting systems which would function in both intended and unexpected control-limiting situations must be properly balanced between providing needed crew awareness and avoiding nuisance warnings.

3. High Intensity Radiated Fields (HIRF) Protection

The 787 will use electrical and electronic systems which perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from radio frequency transmitter and use of sensitive avionics/electronics and electrical systems to command and control the airplane have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the 787. These special conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function because of HIRF.

High-power radio frequency transmitters for radio, radar, television, and satellite communications can adversely affect operations of airplane electrical and electronic systems. Therefore, immunity of critical avionics/electronics and electrical systems to HIRF must be established. Based on surveys and analysis of existing HIRF emitters, adequate protection from HIRF exists if airplane system immunity is demonstrated when exposed to the HIRF environments in either paragraph (a) OR (b) below:

(a) A minimum environment of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

(1) System elements and their associated wiring harnesses must be exposed to this environment without benefit of airframe shielding.

(2) Demonstration of this level of protection is established through system tests and analysis.

(b) An environment external to the airframe of the field strengths shown in the table below for the frequency ranges indicated. Immunity to both peak and average field strength components from the table must be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

The environment levels identified above are the result of an FAA review of existing studies on the subject of HIRF and of the work of the Electromagnetic Effects Harmonization Working Group of ARAC.

4. Limit Engine Torque Loads for Sudden Engine Stoppage

The 787 will have high-bypass engines with a chord-swept fan 112 inches in diameter. Engines of this size were not envisioned when § 25.361, pertaining to loads imposed by engine seizure, was adopted in 1965. Worst case engine seizure events become increasingly more severe with increasing engine size because of the higher inertia of the rotating components.

Section 25.361(b)(1) requires that for turbine engine installations, the engine mounts and supporting structures must be designed to withstand a "limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure." Limit loads are expected to occur about once in the lifetime of any airplane. Section 25.306 requires that supporting structures be able to support limit loads without detrimental permanent deformation, meaning that supporting structures should remain serviceable after a limit load event.

Since adoption of § 25.361(b)(1), the size, configuration, and failure modes of jet engines have changed considerably. Current engines are much larger and are designed with large bypass fans. In the event of a structural failure, these engines are capable of producing much higher transient loads on the engine mounts and supporting structures.

As a result, modern high bypass engines are subject to certain rare-but-severe engine seizure events. Service history shows that such events occur far less frequently than limit load events. Although it is important for the airplane to be able to support such rare loads safely without failure, it is unrealistic to expect that no permanent deformation will occur.

Given this situation, ARAC has proposed a design standard for today's large engines. For the commonly-occurring deceleration events, the proposed standard requires engine mounts and structures to support maximum torques without detrimental permanent deformation. For the rare-but-severe engine seizure events such as loss of any fan, compressor, or turbine blade, the proposed standard requires engine mounts and structures to support maximum torques without failure, but allows for some deformation in the structure.

The FAA concludes that modern large engines, including those on the 787, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant special conditions. These special conditions contain design criteria recommended by ARAC.

5. Design Roll Maneuver Requirement

The 787 is equipped with an electronic flight control system that provides control of the aircraft through pilot inputs to the flight computer. Current part 25 airworthiness regulations account for "control laws," for which aileron deflection is proportional to control stick deflection. They do not address any nonlinearities [1] or other effects on aileron actuation that may be caused by electronic flight controls. Therefore, the FAA considers the flight control system to be a novel and unusual feature compared to those envisioned when current regulations were adopted. Since this type of system may affect flight loads, and therefore the structural capability of the airplane, special conditions are needed to address these effects.

These special conditions differ from current requirements in that they require that the roll maneuver result from defined movements of the cockpit roll control as opposed to defined aileron deflections. Also, these special conditions require an additional load condition at design maneuvering speed (V_A), in which the cockpit roll control is returned to neutral following the initial roll input.

These special conditions differ from similar special conditions applied to previous designs. These special conditions are limited to the roll axis only, whereas previous special conditions also included pitch and yaw axes. Special conditions are no longer needed for the yaw axis because § 25.351 was revised at Amendment 25–91 to take into account effects of an electronic flight control system. No special conditions are needed for the pitch axis because the applicant's proposed method for the pitch maneuver takes into account effects of an electronic flight control system.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–06–15–SC for the 787 was published in the **Federal Register** on March 12, 2007 (72 FR 10941). Only one comment was received and it addressed proposed Special Conditions No. 5.

Comment on Special Conditions No. 5. Design Roll Maneuver Requirement

Requested change: The commenter, an individual, stated that the paragraph dealing with § 25.349(a) in the proposed special conditions is a little confusing. Paragraphs (c) and (d) of the proposed special conditions both refer to "paragraph (2)". But there are no numbered paragraphs in proposed Special Conditions No. 5. The commenter thought that the reference was to paragraph (2) of § 25.349(a), but since § 25.349(a) is superseded by the special conditions, the commenter suggested that this may cause confusion.

FAA response: The reference to paragraph (2) in the proposed special conditions was an error and we thank the commenter for pointing it out. The reference should have been "paragraph (b)." We have revised the final special conditions accordingly. Otherwise, all 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.

1. Interaction of Systems and Structures

The Boeing Model 787–8 airplane is equipped with systems which affect the airplane's structural performance either directly or as a result of failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with requirements of subparts C and D of part 25 of Title 14 of the Code of Federal Regulations. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined here address only direct structural consequences of system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. They may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structure whose failure could prevent continued safe flight and landing. Specific criteria defining acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in these special conditions.

(b) Depending on the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in these special conditions in order to demonstrate capability of the airplane to meet other realistic conditions such as alternative gust conditions or maneuvers for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to these special conditions.

(1) *Structural performance:* Capability of the airplane to meet the structural requirements of part 25.

(2) *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight failure occurrence and that are included in the flight manual (speed limitations or avoidance of severe weather conditions, for example).

(3) *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (fuel, payload, and master minimum equipment list limitations, for example).

(4) *Probabilistic terms:* Terms (probable, improbable, extremely improbable) used in these special conditions which are the same as those probabilistic terms used in § 25.1309.

(5) *Failure condition:* Term that is the same as that used in § 25.1309. The term failure condition in these special conditions, however, applies only to system failure conditions that affect

[1] A nonlinearity is a situation where output does not change in the same proportion as input.

structural performance of the airplane. Examples are system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins.

Note: Although failure annunciation system reliability must be included in probability calculations for paragraph (f) of these special conditions, there is no specific reliability requirement for the annunciation system required in paragraph (g) of the special conditions.

(d) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(e) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C of 14 CFR part 25 (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant degree of nonlinearity in rate of displacement of control surface or thresholds, or any other system nonlinearities, must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 for static strength and residual strength, using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered if the applicant demonstrates that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

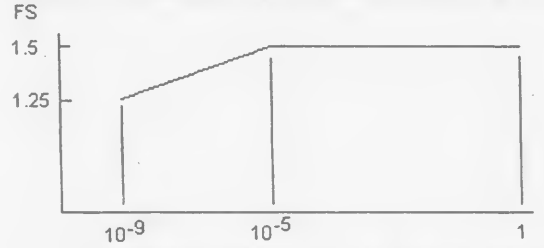
(f) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *Establishing loads at the time of failure.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads, multiplied by an appropriate factor of safety related to probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph (f)(1)(i) of these special conditions. for pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). for failure conditions that result in speeds beyond design cruise speed or design cruise mach number (V_c/M_c), freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) *Establishing loads in the system failed state for the continuation of the flight.* For the continuation of flight of the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) Loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_c/M_c, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in § 25.331 and § 25.345.

(B) The limit gust and turbulence conditions specified in § 25.341 and § 25.345.

(C) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in § 25.473 and § 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (f)(2)(i) of these special conditions multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of Safety For Continuation of Flight

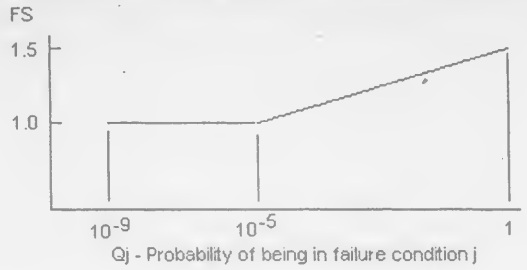
$Qj=(Tj)(Pj)$

Where:

Tj=Average time spent in failure condition j (in hours)

Pj=Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C—Structure, of 14 CFR part 25.



(iii) for residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (f)(2)(ii) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then the effects of these loads must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance Speed

V′=Clearance speed as defined by § 25.629(b)(2).

V″=Clearance speed as defined by § 25.629(b)(1).

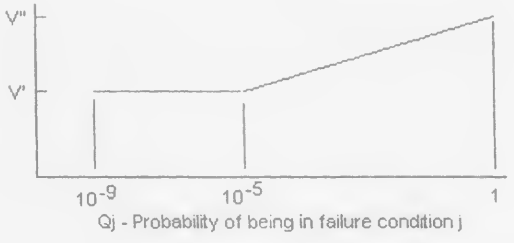
Qj=(Tj)(Pj)

Where:

Tj=Average time spent in failure condition j (in hours)

Pj=Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.



(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(g) *Failure indications.* For system failure detection and indication, the following apply.

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability of the airplane below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, instead of detection and indication systems to achieve the objective of this requirement. Such certification maintenance inspections or daily checks must be limited to components on which faults are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

(h) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions of paragraph (e) for the dispatched condition, and paragraph (f) for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

2. Electronic Flight Control System: Control Surface Awareness

In addition to compliance with §§ 25.143, 25.671, and 25.672, the following special conditions apply.

(a) The system design must ensure that the flightcrew is made suitably aware whenever the primary control means nears the limit of control authority. This indication should direct the pilot to take appropriate action to avoid the unsafe condition in accordance with appropriate airplane flight manual (AFM) instructions. Depending on the application, suitable annunciations may include cockpit control position, annunciator light, or surface position indicators. Furthermore, this requirement applies at limits of control authority, not necessarily at limits of any individual surface travel.

(b) Suitability of such a display or alerting must take into account that some pilot-demanded maneuvers are necessarily associated with intended full performance, which may require full surface deflection. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed crew awareness and nuisance factors. A monitoring system which might compare airplane motion, surface deflection, and pilot demand could be useful for eliminating nuisance alerting.

3. High Intensity Radiated Fields (HIRF) Protection

(a) Protection from Unwanted Effects of High-intensity Radiated fields. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

(b) For the purposes of these Special Conditions, the following definition applies. Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent continued safe flight and landing of the airplane.

4. Limit Engine Torque Loads for Sudden Engine Stoppage

In lieu of § 25.361(b) the Boeing Model 787–8 must comply with the following special conditions.

(a) For turbine engine installations, the engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

(2) The maximum acceleration of the engine.

(b) For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden auxiliary power unit deceleration due to malfunction or structural failure.

(2) The maximum acceleration of the power unit.

(c) For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

(1) Loss of any fan, compressor, or turbine blade.

(2) Where applicable to a specific engine design, any other engine structural failure that results in higher loads.

(d) The ultimate loads developed from the conditions specified in paragraphs (c)(1) and (c)(2) are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Design Roll Maneuver Requirement

In lieu of compliance to § 25.349(a), the Boeing Model 787–8 must comply with the following special conditions.

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

(a) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(b) At V_A, sudden movement of the cockpit roll control up the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(c) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph (b).

(d) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph (b).

Issued in Renton, Washington, on July 18, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–3689 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27359; Directorate Identifier 2006–NM–042–AD; Amendment 39–15136; AD 2007–15–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This AD requires repetitive high frequency eddy current inspections for cracks of the fuselage skin at stringer 5 left and right between stations 340 and 350, and corrective actions if necessary. This AD results from reports of fatigue cracks in the fuselage skin near stringer 5 between stations 340 and 350. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin near stringer 5. Cracks in this area could join together and result in in-flight depressurization of the airplane.

DATES: This AD becomes effective September 4, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 4, 2007.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That NPRM was published in the **Federal Register** on March 6, 2007 (72 FR 9877). That NPRM proposed to require repetitive high frequency eddy current inspections for cracks of the fuselage skin at stringer 5 left and right between stations 340 and 350, and corrective actions if necessary.

Comments

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

Support for the NPRM

Boeing concurs with the NPRM.

Request for Alternative Method of Repair

Air Transport Association (ATA) on behalf of its member United Parcel Service (UPS), requests that we allow the use of an alternate method of repair. UPS notes that "Boeing Alert Service Bulletin 747–53A2542 allows operators to install a repair in accordance with the Boeing 747–100/200/300 Structural Repair Manual (SRM) 53–30–03, provided that the repair is removed and replaced with the Boeing Service Bulletin 747–53–2272 modification prior to the threshold of AD 90–06–06." (We referred to Service Bulletin 747–53–2272, Revision 17. dated November 18, 1999; and Revision 18, dated May 16, 2002; as appropriate sources of service information for doing the terminating action specified in paragraph (g) of the NPRM.) UPS believes that this option is beneficial to operators, in that it would allow operators to effect repairs (if necessary) in an expedient manner, and that this is especially important given that the proposed initial inspection compliance time of 250 cycles may not be sufficient to allow accomplishing the initial inspection in a normal C-check environment. UPS believes that the NPRM should be re-formatted to more clearly specify inspection, repair, and terminating action requirements. Therefore, UPS requests that paragraph (f) be modified to include a standard repair per Boeing 747–100/200/300 SRM 53–30–03 as an acceptable alternative for repairing the crack(s), for airplanes which have not reached the incorporation threshold of AD 90–06–06 (20,000 flights is one incorporation threshold described by AD 90–06–06). The SRM repair would then be removed and replaced by the permanent repair per Service Bulletin 747–53–2272, Revision 18 or earlier, prior to reaching 20,000 total aircraft cycles (flights). Further, to clarify the inspection, repair and terminating action requirements, UPS provides a revised paragraph (f) and suggests new paragraphs (g) and (h), which would lead to re-identifying subsequent existing paragraphs.

We agree with UPS that the described SRM repair option is beneficial to operators and should be allowed. However, this option is already allowed. Paragraph (f) of the AD requires doing applicable corrective actions in accordance with Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006. The corrective actions described in the alert service bulletin permit operators to choose the option of doing the SRM repair followed by eventual replacement with the permanent repair described in Boeing Service Bulletin 747–53–2272, Revision 18, dated May 16, 2002. Therefore, we have determined that the option described by UPS is already available to the operators, and no change is needed to the AD in this regard.

Change Made to Paragraph (b) of the AD

We have revised this action to clarify the effects of AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990) on the repetitive inspection requirements of paragraph (f) of this AD. We have moved the reference to AD 90–06–06 from paragraph (b) to new paragraph (g) of this AD, and reidentified existing paragraphs (g) and (h) of this AD accordingly.

Change Made to Paragraph (g) of the AD

We have changed paragraph (g) of the AD to specify that the actions required in that paragraph must be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, and that Boeing Service Bulletin 747–53–2272, Revision 18, dated May 16, 2002, and earlier revisions, are one approved method of compliance for doing the required actions. After the effective date of this AD, no revision of Service Bulletin 747–53–2272 other than Revision 18 is acceptable as an approved method of compliance. Further, as described above, we have re-identified existing paragraph (g) as paragraph (h) of this AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 281 airplanes of the affected design in the worldwide fleet. This AD will affect about 92 airplanes of U.S. registry. The required inspection will take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $29,440, or $320 per airplane, per inspection cycle.

For Group 2 airplanes (about 4 of U.S. registry), the mandatory terminating action for the repetitive inspections will take about 1,240 work hours, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the terminating action

for U.S. operators is $396,800, or $99,200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–15–07 Boeing: Amendment 39–15136. Docket No. FAA–2007–27359; Directorate Identifier 2006–NM–042–AD.

Effective Date

(a) This AD becomes effective September 4, 2007.

Affected ADs

(b) Installing external skin doublers as required only for Group 2 airplanes by paragraph (h) of this AD, ends the repetitive inspections of the fuselage skin required by paragraph (f) of AD 2005–08–01, amendment 39–14053, only for the area near the flight deck windows modified by the external skin doublers.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006.

Unsafe Condition

(d) This AD results from reports of fatigue cracks in the fuselage skin near stringer 5 between body stations 340 and 350. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin near stringer 5. Cracks in this area could join together and result in in-flight depressurization of the airplane.

Compliance

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

Inspections and Corrective Actions

(f) For any airplane that has not had external skin doublers installed around the left- or right-side Number 3 flight deck window in accordance with Boeing Service Bulletin 747–53–2272, Revision 18, dated May 16, 2002, or an earlier revision: Do the applicable actions described in paragraphs (f)(1) and (f)(2) of this AD. Do all the actions in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006. Do the actions at the compliance times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006, on the side(s) of the airplane on which the doubler installation has not been done; except where the service bulletin specifies compliance times after the date on the service bulletin, this AD requires compliance times after the effective date of this AD. Installing external skin doublers around the left- or right-side Number 3 flight deck windows in accordance with Boeing Service Bulletin 747–53–2272, Revision 18, or an earlier revision, ends the repetitive high-frequency eddy current (HFEC) inspections required by this paragraph on the side of the airplane on which the doublers are installed. After the effective date of this AD, only Boeing Service Bulletin 747–53–2272, Revision 18, may be used to install the external skin doublers around the left- and right-side Number 3 flight deck windows.

(1) Do a HFEC inspection for cracks of the fuselage skin at stringer 5, between body stations 340 and 350; and do all applicable corrective actions before further flight.

(2) Repeat the HFEC inspection thereafter at the applicable interval specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006.

Credit for Actions of Alternative AD

(g) For Group 1 airplanes only: External skin doublers installed around the left- or right-side Number 3 flight deck windows in accordance with the requirements of AD 90–06–06, amendment 39–6490, end the repetitive HFEC inspections required by paragraph (f) of this AD on the side of the airplane on which the doublers are installed.

Terminating Action

(h) For Group 2 airplanes only: Before accumulating 24,000 total flight cycles, or within 250 flight cycles after the effective date of the AD, whichever occurs later, install external skin doublers around the left- and right-side Number 3 flight deck windows; in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Boeing Service Bulletin 747–53–2272, Revision 17, dated November 18, 1999, and Revision 18, dated May 16, 2002, describe one approved method of compliance for doing the required actions. After the effective date of this AD, only Revision 18 is acceptable as an approved method of compliance. Accomplishing this action ends the repetitive inspections required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been

authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14140 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28157 Directorate Identifier 2007–CE–046–AD; Amendment 39–15138; AD 2007–15–09]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Limited Model PC–6 Series Airplanes

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

ACTION: Final Rule.

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the upper wing strut fittings of some PC–6 aircraft.

It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks in this area could lead to failure of the upper attachment fitting. This could result in the failure of the wing structure with subsequent loss of control of the airplane.

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

DATES: This AD becomes effective September 4, 2007.

On September 4, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 30, 2007 (72 FR 29895). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the upper wing strut fittings of some PC–6 aircraft.

It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks in this area could lead to failure of upper the attachment fitting. This could result in the failure of the wing structure with subsequent loss of control of the airplane.

In order to correct and monitor this situation, the present AD mandates a one time inspection of the wing strut fittings and replacement of damaged wing strut fittings with new ones. This AD also requires examination of the spherical bearings installed in the wing strut fittings and their replacement for bearings that do not pass the examination criteria.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received.

Comment Issue: Allow a Dye-Penetrant Inspection

One commenter requested that we allow a dye-penetrant inspection as an option to the eddy current inspection.

Without specific procedures and proposed intervals, the FAA is not able to approve dye-penetrant inspection as an approved method for this AD. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community and Pilatus (the design organization approval holder) only approved using an eddy current procedure for this inspection. Pilatus has only established procedures to detect cracks in the affected areas using the eddy current method. The FAA will not change the AD to allow for dye-penetrant inspections in place of eddy current as called out for in the NPRM per the Pilatus service bulletin (SB) without having specific procedures and intervals that we can coordinate with EASA and Pilatus. An operator may propose these procedures and intervals to the FAA using the alternative method of compliance (AMOC) process specified in 14 CFR 39.19 and the AD. The AMOC proposal must provide the complete method of inspection that the operator believes will provide an acceptable level of safety as that proposed in the AD. The FAA will then coordinate the proposed AMOC with Pilatus and EASA to determine if the method provides an acceptable level of safety. If so, an AMOC can be granted for the FAA issued AD.

We are making no changes to the final rule AD action based on this comment.

Conclusion

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

Differences Between this AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 50 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $28,000 or $560 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $2,500, for a cost of $3,700 per fitting or $7,400 per product if both fittings are replaced. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–15–09 Pilatus Aircraft Limited: Amendment 39–15138; Docket No. FAA–2007–28157; Directorate Identifier 2007–CE–046–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes; manufacturer serial numbers (MSN) 101 through 951, and MSN 2001 through 2092; that are certificated in any category. These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

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

Reason

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the upper wing strut fittings of some PC–6 aircraft.

It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks in this area could lead to failure of the upper attachment fitting. This could result in the failure of the wing structure with subsequent loss of control of the airplane.

In order to correct and monitor this situation, the present AD mandates a one time inspection of the wing strut fittings and replacement of damaged wing strut fittings with new ones. This AD also requires examination of the spherical bearings installed in the wing strut fittings and their replacement for bearings that do not pass the examination criteria.

Actions and Compliance

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

(1) *For MSN 2001 through MSN 2092:* Within the next 100 hours time-in-service (TIS) on the upper wing strut fitting after September 4, 2007 (the effective date of this AD) or within 3 months after September 4, 2007 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, do the actions specified in paragraph (f)(3) of this AD.

(2) *For MSN 101 through MSN 951* do the following actions, as applicable:

(i) If the upper wing strut fitting has less than 3,500 hours TIS or has been installed for less than 84 months (7 years): Within the next 1,000 hours TIS on the upper wing strut fitting after September 4, 2007 (the effective date of this AD) or within 24 months after September 4, 2007 (the effective date of this AD) without exceeding 3,600 hours TIS or 87 months (7 years, 3 months), whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, do the actions specified in paragraph (f)(3) of this AD, or;

(ii) If the upper wing strut fitting has 3,500 or more hours TIS or has been installed for 84 months (7 years) or longer: Within the next 100 hours TIS on the upper wing strut fitting after September 4, 2007 (the effective date of this AD) or within 3 months after September 4, 2007 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, do the actions specified in paragraph (f)(3) of this AD.

Note 1: If the TIS of the upper wing strut fittings cannot be positively determined by a review in the airplane maintenance records, then by default the upper wing strut fittings

were installed from the date of original Certificate of Airworthiness.

(3) Do the following at the times specified in paragraph (f)(1) or (f)(2) of this AD:

(i) Perform a visual and non-destructive inspection of the upper wing strut fittings for cracks following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007.

(ii) Examine for conformity the spherical bearings following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007.

(4) If during any inspection required by paragraph (f)(3)(i) of this AD cracks are found in the upper wing strut fitting, before further flight replace the wing strut fitting with a new part number (P/N) 111.35.06.185 (left side) or P/N 111.35.06.186 (right side) following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007. Replacement of the upper wing strut fitting does not terminate the repetitive inspection specified in paragraph (f)(3) of this AD.

(5) If during any inspection required by paragraph (f)(3)(ii) of this AD the spherical bearing is found not in conformity, before further flight replace the bearing with a new P/N 944.61.00.109 following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007. Replacement of the spherical bearing does not terminate the repetitive inspection specified in paragraph (f)(3) of this AD.

(6) Report to Pilatus Aircraft Ltd. Customer Liason Manager results of the inspection/examination using Table 1 of Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The FAA AD is requiring repetitive inspections and reporting results to the manufacturer, not just a one-time inspection and report as required in the MCAI.

(2) The Service Bulletin specifies "subsequent inspections for cracks will be included in Chapter 5 of the Aircraft Maintenance Manual (AMM)." The only way we (FAA) can mandate these repetitive inspections is through an AD.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120 0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No: 2007–0114, dated May 02, 2007; and Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007, for related information.

Material Incorporated by Reference

(i) You must use Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 STANS, Switzerland; telephone: +41 (0)41 619 6580; fax: +41 (0)41 619 6576; e-mail: *fodermatt@pilatus-aircraft.com*.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on July 19, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14428 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26441; Directorate Identifier 2006–NM–204–AD; Amendment 39–15139; AD 2007–15–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This AD requires an inspection of the No. 2 and No. 3 windows on the left and right sides of the airplane to determine their part numbers, and related investigative and corrective actions if necessary. This AD results from loss of a No. 3 window in-flight. We are issuing this AD to detect and correct cracking in the fail-safe interlayer of certain No. 2 and No. 3 glass windows, which could result in loss of the window and consequent rapid loss of cabin pressure. Loss of the window could also result in crew communication difficulties or incapacitation of the crew.

DATES: This AD becomes effective September 4, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 4, 2007.

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

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

FOR FURTHER INFORMATION CONTACT: Steve Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on December 8, 2006 (71 FR 71099). That NPRM proposed to require an inspection of the No. 2 and No. 3 windows on the left and right sides of the airplane to determine their part numbers, and related investigative and corrective actions if necessary.

Comments

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

Support for the NPRM

Boeing supports the NPRM, and British Airways supports the intent of the NPRM.

Request To Extend Grace Period

Qantas Airways states that the compliance times given in calendar time (units of years) in Tables 1, 2, and 3 of Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006, are not relevant for windows installed after the issue date of the service bulletin. As an example, the commenter states that a window installed on an airplane 5 years from now will have already surpassed the compliance time at the time of installation. Qantas Airways, therefore, requests that the calendar times in Tables 1, 2, and 3 of the service bulletin be revised as follows: "Within 2 (or 3) years after the date on this service bulletin, or after the window was installed, whichever occurs last." Qantas Airways asserts that this change will ensure that the inspection of newly installed windows is controlled by calendar and flight-hour constraints.

We agree to clarify the compliance time for newly installed windows. If a discrepant window is replaced with a new window, then the initial detailed inspection of the new window must be accomplished within either 5,500 or 22,000 flight hours after installing the window, depending on the window part number. The inspection must be repeated at the interval stated in Table 2 or 3, as applicable, of the Boeing service bulletin. We have revised paragraph (g) of this AD to clarify the compliance time.

Request To Include Terminating Action

GKN Aerospace states that it manufactures some of the affected windows identified in Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006. GKN Aerospace states that it is concerned about the potential removal rates of in-service airplanes to address the unsafe condition; therefore, it is working to certify an improved window design that incorporates a new, improved interlayer, which is less susceptible to the cracking experienced with the existing windows. We infer the commenter would like us to include a terminating action in this AD.

We agree that improving the window design to prevent cracking is a preferable solution than requiring long-term repetitive inspections. In the preamble of the NPRM, we stated that we considered this action to be an interim action. When a final action is identified, we may consider further rulemaking. We have not changed this AD in this regard.

Request To Skip Inspection To Determine Part Number

Boeing Aerospace Operations Engineering and Logistics Services requests that we allow operators to skip the window identification procedure and accomplish the rest of the service bulletin as though the part number could not be identified. The commenter states that since some airplanes are equipped with unique No. 2 and No. 3 windows, the window identification cannot be accomplished according to Part 1 of the Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006, or the replacement according to Part 2, step 4 of the service bulletin.

We do not agree to delete the inspection to determine the part numbers of the windows. Operators who inspect and determine that the affected windows are not installed on an airplane are not required to accomplish the related investigative and corrective actions. Therefore, accomplishing the inspection to determine the window part numbers may relieve some operators of the on-condition requirements. However, under the provisions of paragraph (h) of this AD, we may consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Revise Compliance Times

British Airways states that the compliance times in Tables 2 and 3 of Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006, should be revised as follows:

- For part numbers (P/Ns) 65B27042-( ) and 65B27043-( ), the initial inspection should be extended from 5,500 flight hours to 9,000 flight hours.
- For P/Ns 65B27046-( ) and 65B27047-( ), the initial inspection should be reduced from 22,000 flight hours to 15,000 flight hours, and the repetitive interval should be reduced from 7,500 flight hours to 3,000 flight hours (to match the repetitive interval for P/Ns 65B27042-( ) and 65B27043-( )).

British Airways asserts that, based on its experience, the longer compliance times for P/Ns 65B27046-( ) and 65B27047-( ), are not justified. British Airways also asserts that requiring different repetitive intervals for different windows does not make sense since many airlines use a mix of windows on their airplanes.

We acknowledge British Airways' comments but disagree with revising the compliance times as proposed by the commenter. In developing the compliance time for this AD action, we considered not only the safety implications of the identified unsafe condition, but the recommendations of the manufacturer, known service experience, average utilization rate of the affected fleet, and the availability of required parts. British Airways refers to its service experience but does not provide any data to support its comment. We invite British Airways to submit, to Boeing, any data it has that supports its comments related to changing certain compliance times. We would consider further rulemaking should such data support changing the compliance times of this AD. To further delay this AD would be inappropriate considering the need to correct a known safety problem in a timely manner. Further, operators are always permitted to accomplish the requirements of an AD at an earlier time than the required compliance time; therefore, an operator may choose to inspect P/Ns 65B27046-( ) and 65B27047-( ) at repetitive intervals of 3,000 flight hours. We have determined that the compliance times recommended in the service bulletin are appropriate for addressing the unsafe condition and we have not changed this AD in this regard.

Request To Delete Grace Period

British Airways states that the grace period of 1,000 flight hours after the date on the service bulletin is obsolete, since this time period will have been exceeded by the time we issued an AD. We infer that the commenter would like us to delete the grace period from Tables

2 and 3 of Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006.

We disagree with deleting the grace period. We would like to point out that in paragraph (g) of the NPRM, which is retained in this AD, we stated that the compliance times given in the service bulletin are to be counted from the effective date of this AD, not from the date on the service bulletin. We have not changed this AD in this regard.

Request To Rephrase Compliance Time

British Airways requests that we delete the word "or" where the service bulletin compliance times are restated in the "Relevant Service Information" section of the NPRM. As justification, the commenter states that using the word "or" gives an operator the choice of choosing between two compliance times.

We disagree with revising this AD, since the "Relevant Service Information" section is not retained in a final rule. We have reviewed the NPRM and find that the wording used throughout the NPRM is consistent with the service bulletin. Further, where we restated the service bulletin compliance times in the NPRM, the lead-in statements clearly specify doing the proposed actions at the earlier of the compliance times; therefore, the compliance time cannot be chosen at an operator's discretion. We have not changed this AD in this regard.

Request To Revise Costs of Compliance

• British Airways requests that we make the following changes to the "Costs of Compliance" section:

• Add the cost of replacing a cracked window. The commenter states that the "Costs of Compliance" section is wrong because it does not estimate the cost of replacing a cracked window.

• Include the cost of having to remove an airplane from service 40% more frequently to accomplish the repetitive actions.

• Revise the estimated work hours. The commenter asserts that it should take ½ hour to inspect a window to determine its part number, and that the inspection for cracks would require 2 people and would take 1 hour.

We do not agree to revise the "Cost of Compliance" section as the commenter proposes. The economic analysis of an AD is limited to the cost of actions that are actually required. The economic analysis does not consider the costs of conditional actions, such as repairing a crack detected during a required inspection ("repair, if necessary"). Such conditional repairs would be required—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations. Furthermore, we do not consider it appropriate to attribute the costs associated with aircraft "down time" to the AD. Also we have determined the cost of compliance from information contained in the manufacturer's service information. We recognize that individual operators might incur costs less than or more than our estimate. It is impossible to estimate such individual variations. We have not changed this AD in this regard.

Request To Revise Service Bulletin

British Airways submitted several comments on the accuracy and clarity of Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006. We infer that the commenter would like us delay issuance of the AD until the service bulletin is revised to incorporate its comments.

We acknowledge the value of the information submitted by the commenter. British Airways' comments will be of benefit to any future revisions of the service bulletin. In this case, however, the service bulletin is acceptable for ensuring that the unsafe condition is addressed. Therefore, we do not agree to delay this action until the service bulletin has been revised. To do so would be inappropriate, since we have determined that an unsafe condition exists, and that inspections must be conducted to ensure continued safety. We have not changed this AD in this regard.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 949 airplanes of the affected design in the worldwide fleet. This AD affects about 153 airplanes of U.S. registry. The required inspection to determine the window part numbers takes about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $48,960, or $320 per airplane.

The detailed inspection, if necessary, takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the detailed inspection for U.S. operators is $80 per airplane, per inspection cycle, if necessary.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–15–10 Boeing: Amendment 39–15139. Docket No. FAA–2006–26441; Directorate Identifier 2006–NM–204–AD.

Effective Date

(a) This AD becomes effective September 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from loss of a No. 3 window in-flight. We are issuing this AD to detect and correct cracking in the fail-safe interlayer of certain No. 2 and No. 3 glass windows, which could result in loss of the window and consequent rapid loss of cabin pressure. Loss of the window could also result in crew communication difficulties or incapacitation of the crew.

Compliance

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

Inspection, Related Investigative Actions, and Corrective Action

(f) Inspect the No. 2 and No. 3 windows on the left and right sides of the airplane to determine their part numbers, and do all the applicable related investigative and corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006, as applicable. Do all of these actions at the compliance times specified in Tables 1, 2, and 3 of paragraph 1.E. of the service bulletin, as applicable, except as provided by paragraph (g) of this AD. A review of airplane maintenance records is acceptable in lieu of the inspection if the part numbers of the windows can be conclusively determined from that review. Repeat the related investigative and corrective actions thereafter at the interval specified in Table 2 or 3 of the service bulletin, as applicable.

Exceptions to Compliance Times

(g) Where Tables 1, 2, and 3 of paragraph 1.E. of Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006, specify counting the compliance time from "... after the date on this service bulletin," this AD requires counting the compliance time from the effective date of this AD. After replacing a discrepant window with a new window, do the initial detailed inspection of the new window at the applicable compliance time: (1) within 5,500 flight cycles after installing part number (P/N) 65B27042–( ) or 65B27043–( ), or (2) within 22,000 flight cycles after installing P/N 65B27046–( ) or 65B27047–( ).

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 747–56A2012, dated August 24, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 18, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14426 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9336]

RIN 1545–BF82

Return Required by Subchapter T Cooperatives Under Section 6012

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that prescribe the form that cooperatives must use to file their income tax returns. The regulations affect all cooperatives that are currently required to file an income tax return on either Form 1120, "U.S. Corporation Income Tax Return," or Form 990–C, "Farmers' Cooperative Association Income Tax Return." The new form will help the IRS to properly identify cooperatives and differentiate between cooperatives that must file returns within 2½ months of the end of the taxable year and those that must file within 8½ months of the end of the taxable year.

DATES: *Effective date:* July 30, 2007.

Applicability date: These regulations apply to returns for taxable years ending on or after December 31, 2007. In addition, taxpayers may rely on the regulations in filing returns for taxable years ending on or after December 31, 2006, and before December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew P. Howard, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under existing regulations, all cooperatives to which subchapter T applies (Subchapter T cooperatives) are required to make income tax returns. Except in the case of farmers' cooperatives, the regulations require that the return be made on Form 1120. In the case of farmers' cooperatives, the regulations require that the return be made on Form 990–C.

Most taxpayers required to make an income tax return on Form 1120 must file their return on or before the 15th day of the third month following the close of the taxpayer's taxable year (2½ month deadline). Some Subchapter T cooperatives that make their returns on Form 1120 are required to file by the 2½ month deadline, but others are not required to file their returns until the 15th day of the ninth month following the close of the taxpayer's taxable year

(8½ month deadline). Because the Form 1120 does not distinguish between Subchapter T cooperatives that must file by the 2½ month deadline and those that must file by the 8½ month deadline, the IRS has difficulty determining which filing deadline applies and deciding whether to assert delinquency and failure to pay penalties in the case of returns filed after the 2½ month deadline.

The Proposed Regulations

On July 29, 2005, a notice of proposed rulemaking was published in the **Federal Register** (REG–149436–04, 70 FR 43811). The proposed regulations in this notice of proposed rulemaking would require all Subchapter T cooperatives to make their income tax returns on Form 1120-C, "U.S. Income Tax Return for Cooperative Associations," or such other form as may be designated by the Commissioner.

One telephone comment was received in response to the notice of proposed rulemaking. The comment suggested that the new form might have a negative effect on consolidated filing. No public hearing was requested or held.

Explanation of Provisions

After consideration of the comment, the proposed regulations are adopted as revised by this Treasury decision. The final regulations retain the requirement that Subchapter T cooperatives file their returns on Form 1120–C. The information that Subchapter T cooperatives will be required to provide on new Form 1120–C will assist taxpayers and the IRS in determining the appropriate filing deadline. Having that information will reduce the burden on taxpayers and will help the IRS avoid asserting penalties in inappropriate cases. Having all Subchapter T cooperatives make their income tax returns on Form 1120–C will also eliminate confusion over which form to file and will promote efficiency in addressing income tax issues common to Subchapter T cooperatives.

The IRS and Treasury Department believe that this requirement will not have a negative effect on consolidated filing. Subchapter T cooperatives may continue to file returns on behalf of consolidated groups by indicating their filing status on Form 1120–C and complying with the regulations under section 1502 of the Internal Revenue Code (Code).

This requirement to use Form 1120–C was proposed to be effective for taxable years ending on or after December 31, 2006. Because the regulations were not finalized before the end of 2006, the final regulations delay the proposed effective date. The final regulations apply beginning with the first taxable year ending on or after December 31, 2007. Cooperatives may rely on the regulations as proposed, however, and file returns on Form 1120–C for taxable years ending on or after December 31, 2006, and before December 31, 2007.

Effect on Other Documents

The following publications are removed as of July 30, 2007: Announcement 84–26, 1984–11 IRB 42. Announcement 84–37, 1984–17 IRB 32.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Matthew P. Howard, Office of Assistant Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6012–2 is amended by revising paragraph (f) to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * *

(f) *Subchapter T cooperatives*—(1) *In general.* For taxable years ending on or after December 31, 2007, a cooperative organization described in section 1381 (including a farmers' cooperative exempt from tax under section 521) is required to make a return, whether or not it has taxable income and regardless of the amount of its gross income, on Form 1120–C, "U.S. Income Tax Return for Cooperative Associations," or such other form as may be designated by the Commissioner.

(2) *Farmers' cooperatives.* For taxable years ending before December 31, 2007, a farmers' cooperative organization described in section 521(b)(1) (including a farmers' cooperative that is not exempt from tax under section 521) is required to make a return on Form 990–C, "Farmers' Cooperative Association Income Tax Return."

(3) *Effective/applicability date.* This paragraph (f) is applicable on or after July 30, 2007.

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Kevin M. Brown,

Deputy Commissioner of Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9345]

RIN 1545–BA93

Section 1248 Attribution Principles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1248 of the Internal Revenue Code (Code) that provide guidance for determining the earnings and profits attributable to stock of controlled foreign corporations (or former controlled foreign corporations) that are (were) involved in certain nonrecognition transactions. The final regulations are necessary in order to supplement and clarify existing guidance in the regulations under section 1248. The final regulations affect persons subject to the regulations under section 1248, as well as persons to which regulations under other Code provisions, such as section 367(b), apply to the extent that those regulations incorporate the principles of the section

1248 regulations. In addition, the final regulations provide that with respect to the sale by a foreign partnership of the stock of a corporation, the partners in such foreign partnership shall be treated as selling or exchanging their proportionate share of the stock of such corporation for purposes of section 1248.

DATES: *Effective Date:* These regulations are effective on July 30, 2007.

Applicability Dates: For dates of applicability, see §§ 1.1248–1(g) and 1.1248–8(d).

FOR FURTHER INFORMATION CONTACT: Michael Gilman at (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

On June 2, 2006, proposed revisions to the regulations under section 1248(a) of the Code (REG–135866–02) were published in the **Federal Register** (71 FR 31985–01). On August 14, 2006, two corrections to those proposed regulations were published in the **Federal Register** (71 FR 46415 and 71 FR 46416). Two written comments were received. A public hearing was not requested and none was held. After consideration of the written comments and other comments, the June 2, 2006, proposed regulations are adopted as amended by this Treasury decision.

Summary of Comments and Explanation of Revisions

With respect to attribution of earnings and profits to stock of an acquiring corporation held by a non-exchanging shareholder. § 1.1248–8(b)(4) of the proposed regulations provides a rule by cross-reference to § 1.1248–2 or § 1.1248–3 (whichever is applicable) and § 1.1248–8(b)(6) (as applicable). A commentator asserted that the proposed regulations did not adequately explain which earnings and profits were attributed to the stock of the non-exchanging shareholder. This commentator thought that the rule was better explained in the preamble to the proposed regulations, which states that generally the earnings and profits attributable to stock of an acquiring corporation held by a non-exchanging shareholder immediately prior to a restructuring transaction continue to be attributed to such stock, and the earnings and profits of the acquired corporation accumulated prior to the restructuring transaction attributable to the stock of an acquired corporation are not attributed to the non-exchanging shareholder's stock in the acquiring corporation. In order to clarify the regulations, this language from the preamble to the proposed regulations is included in § 1.1248–8(b)(4) of the final regulations.

Under § 1.1248–1(a)(4) of the proposed regulations, the partners in a foreign partnership shall be treated as selling or exchanging their proportionate share of stock of a corporation sold or exchanged by the foreign partnership. The proposed regulations also apply section 1248(a) in cases where the stock in a corporation that is sold or exchanged is held through tiers of foreign partnerships. This treatment is necessary to reflect properly each partner's share of the corporation's earnings and profits as a dividend.

A commentator noted that § 1.1248–1(a)(4) of the proposed regulations could be read to apply to the sale by a partner of its interest in a partnership holding the stock of a corporation. The Treasury Department and the IRS did not intend that interpretation because it would be contrary to section 1248(g)(2)(B). An amount that is received by a partner in exchange for all or part of its partnership interest is treated as ordinary income under section 751(a) and (c) to the extent attributable to stock in a foreign corporation as described in section 1248. Section 1248(g)(2)(B) provides that section 1248 will not apply if any other provision of the Code treats an amount as ordinary income. Accordingly, § 1.1248–1(a)(4) in the final regulations is revised to clarify that a foreign partnership is treated as an aggregate for this purpose only when a foreign partnership sells or exchanges stock of a corporation. Finally, a commentator requested that the final regulations allow a taxpayer to elect to apply the rule in § 1.1248–1(a)(4) to taxable years ending before the effective date of the final regulations. The Treasury Department and the IRS regard this rule as a clarification of existing law, but recognize that some practitioners have expressed the view that prior law was not entirely clear. Accordingly, the final regulations allow taxpayers to apply the rule in § 1.1248–1(a)(4) to open years provided that the taxpayer consistently applies the rule in all such years. A partner makes this election by treating its distributive share of gain attributable to a sale of shares in a controlled foreign corporation as gain recognized on a sale or exchange of stock in a foreign corporation within the meaning of section 1248(a).

In order to clarify the application of § 1.1248–8, the definition of controlled foreign corporation at § 1.1248–8(b)(1)(iii) has been revised to provide that a controlled foreign corporation includes corporations described in either section 953(c)(1)(B) or section 957.

A commentator requested the addition of an example to § 1.367(b)–4(d) to clarify that earnings and profits attributable to certain lower-tier subsidiaries are not taken into account in determining the all earnings and profits amount attributable to transactions described in § 1.367(b)–3. In response to this comment, such an example is included in § 1.367(b)–4(d) of the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of 5 U.S.C. chapter 5 does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act, 5 U.S.C. chapter 6, does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of the final regulations is Michael I. Gilman of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Sections 1.367(b)–2(c)(1) and (2) also issued under 26 U.S.C. 367(b)(1) and (2). Section 1.367(b)–2(d)(3) also issued under 26 U.S.C. 367(b)(1) and (2). * * * Section 1.367(b)–4(d) also issued under 26 U.S.C. 367(b)(1) and (2). * * * Sections 1.1248–1(a)(1), (4), and (5) also issued under 26 U.S.C. 1248(a) and (c)(1) and (2). * * *

Section 1.1248–8 also issued under 26 U.S.C. 1248(a) and (c)(1) and (2). * * *

§ 1.367(b)–2 [Amended]

■ **Par. 2.** Section 1.367(b)–2 is amended by:

■ 1. Removing the language ", as modified by § 1.367(b)–4(d) (as applicable)." from the last sentence of paragraph (c)(1)(ii) and adding the language ". See § 1.1248–8." in its place.

■ 2. Removing paragraphs (c)(2) *Example 4* and (d)(3)(ii).

■ 3. Removing the language ", as modified by paragraph (d)(3)(ii) of this section and § 1.367(b)–4(d) (as applicable)." from the last sentence of paragraph (d)(3)(i)(B)(2) and adding the language ". See § 1.1248–8." in its place.

■ 4. Redesignating paragraph (d)(3)(iii) as paragraph (d)(3)(ii).

■ **Par. 3.** Section 1.367(b)–4(d) is revised to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

* * * * *

(d) *Rules for subsequent sales or exchanges*—(1) *Rule.* If an exchanging shareholder (as defined in § 1.1248–8(b)(1)(iv)) is not required to include in income as a deemed dividend the section 1248 amount under paragraph (b) of this section in a section 367(b) exchange described in paragraph (a) of this section (non-inclusion exchange), then, for purposes of applying section 367(b) or section 1248 to subsequent sales or exchanges, and subject to the limitation of § 1.367(b)–2(d)(3)(ii) (in the case of a transaction described in § 1.367(b)–3), the determination of the earnings and profits attributable to the stock an exchanging shareholder receives in the non-inclusion exchange shall be determined pursuant to the rules of section 1248 and the regulations under that section.

(2) *Example.* The following example illustrates the rules of this section. For purposes of the example, assume that—

(i) There is no immediate gain recognition pursuant to section 367(a)(1) and the regulations under that section (either through operation of the rules or because the appropriate parties have entered into a gain recognition agreement under §§ 1.367(a)–3(b) and 1.367(a)–8);

(ii) References to earnings and profits are to earnings and profits that would be includible in income as a dividend under section 1248 and the regulations under that section if stock to which the earnings and profits are attributable were sold or exchanged by its shareholder;

(iii) Each corporation has only a single class of stock outstanding and uses the calendar year as its taxable year; and

(iv) Each transaction is unrelated to all other transactions.

Example. Acquisition of the stock of a foreign corporation that controls a foreign acquiring corporation in a reorganization described in section 368(a)(1)(C). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a controlled foreign corporation, since its formation on January 1, year 1. CFC1 has owned all the stock of CFC2, a controlled foreign corporation, since its formation on January 1, year 1. FC, a foreign corporation that is not a controlled foreign corporation, has owned all of the stock of FC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that was a triangular reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets, including the CFC2 stock, to FC2 in exchange for 80% of the voting stock of FC. CFC1 transfers the voting stock of FC to DC1 and the CFC1 stock is cancelled. Pursuant to section 1223(1), DC1 is considered to have held the stock of FC since January 1, year 1. Under section 1223(2), FC2 is considered to have held the stock of CFC2 since January 1, year 1. On December 31, year 3, CFC1 has $100 of earnings and profits. From January 1, year 4, until December 31, year 5, FC (a controlled foreign corporation after the restructuring transaction) accumulates an additional $50 of earnings and profits. FC2, a controlled foreign corporation after the restructuring transaction, accumulates $100 of earnings and profits from January 1, year 4, until December 31, year 5. On December 31, year 5, FC is liquidated into DC1 in a transaction described in section 332.

(ii) *Result.* Generally, this paragraph (d) requires that DC1 include in income the earnings and profits attributable to its stock in FC as determined under § 1.1248–8. However, since the liquidation of FC into DC1 is a transaction described in § 1.367(b)–3, the earnings and profits attributable to the stock of FC are limited by § 1.367(b)–2(d)(3)(ii) to that portion of the earnings and profits accumulated by FC itself before or after the restructuring transaction, and do not include the earnings and profits of FC's subsidiaries accumulated before or after the restructuring transaction. Thus, DC1 will include $40 of earnings and profits in income (80% of the $50 of earnings and profits accumulated by FC after the restructuring transaction).

■ **Par. 4.** Section 1.1248–1 is amended by:

■ 1. Removing the language "(or was considered as held by reason of the application of section 1223)" from the first sentence of paragraph (a)(1) and adding the language "(or was considered as held by reason of the application of section 1223, taking into account § 1.1248–8)" in its place and adding a new third sentence.

■ 2. Redesignating paragraph (a)(4) as paragraph (a)(5).

■ 3. Adding new paragraphs (a)(4) and (g).

■ 4. Adding *Example 4* in newly-designated paragraph (a)(5).

The additions read as follows:

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

(a) *In general.* (1) * * * See § 1.1248–8 for additional rules regarding the attribution of earnings and profits to the stock of a foreign corporation following certain nonrecognition transactions. * * *

* * * * *

(4) For purposes of paragraph (a)(1) of this section, if a foreign partnership sells or exchanges stock of a corporation, the partners in such foreign partnership shall be treated as selling or exchanging their proportionate share of the stock of such corporation. Stock which is considered to have been sold or exchanged by a partner by reason of the application of this paragraph (a)(4) shall for purposes of applying such sentence be treated as actually sold or exchanged by such partner.

(5) * * *

Example 4. (i) *Facts.* X, a domestic corporation, and Y, a foreign corporation that is not a controlled foreign corporation, are partners in foreign partnership Z. X has a 60% interest in Z, and Y has a 40% interest in Z. All parties are calendar year taxpayers. On January 1, year 1, Z forms foreign corporation H, a controlled foreign corporation that conducts a business in Country C. Z and H's functional currency is the United States dollar. In years 1 and 2, H did not earn subpart F income as defined in section 952(a). On December 31, year 2, Z sells all of the H stock for $600 when Z's adjusted basis in the stock is $100. Therefore, Z recognizes a gain of $500 on the sale, of which $300 is allocable to X as a 60% partner. At the time of the sale, H had $300 of earnings and profits, $180 of which (that is, 60% of $300) is attributable to X's 60% share of the H stock.

(ii) *Result.* Pursuant to section 1248(a) and paragraphs (a)(1) and (4) of this section, X and Y are treated as selling 60% and 40%, respectively, of the H stock. X includes in its gross income as a dividend $180 of the gain recognized on the sale. Because Y is a foreign corporation that is not a CFC, neither section 1248 nor section 964 applies to the sale of Y's 40% share of the H stock.

(iii) *Alternative facts.* If, instead, X owned its 60% interest in Z through another foreign partnership, the result would be the same.

* * * * *

(g) *Effective/applicability date.* The third sentence in paragraph (a)(1), paragraph (a)(4), and paragraph (a)(5) *Example 4* of this section apply to income inclusions that occur on or after July 30, 2007. A taxpayer may elect to apply paragraph (a)(4) of this section to income inclusions in open taxable years provided that it consistently applies paragraph (a)(4) for income inclusions

in the first year for which the election is applicable and in all subsequent years.

§§ 1.1248–2, 1.1248–3, 1.1248–7 [Amended]

■ **Par. 5.** In §§ 1.1248–2, 1.1248–3, and 1.1248–7, for each entry in the "Section" column, remove the language in the "Remove" column and add the language in the "Add" column in its place.

Section	Remove	Add
§ 1.1248–2(a)(1)	(or was considered to be held by reason of the application of section 1223).	(or was considered to be held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(a)(2)(ii)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(a)(3)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(c)(4)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(e)(1), introductory text	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(e)(2)	(or is considered as held by reason of the application of section 1223).	(or is considered as held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(e)(3)(i)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(a)(1)	(or was considered to be held by reason of the application of section 1223).	(or was considered to be held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(c)(1)(ii)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(e)(2)(i)	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223).	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(e)(3)	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223).	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(e)(5)	(or another person who actually owned the stock during such taxable year and whose holding of the stock is attributed by reason of the application of section 1223 to the person who sold or exchanged the stock).	(or another person who actually owned the stock during such taxable year and whose holding of the stock is attributed by reason of the application of section 1223, taking into account § 1.1248–8, to the person who sold or exchanged the stock).
§ 1.1248–3(e)(6), two places	by reason of the application of section 1223 to such person.	by reason of the application of section 1223 to such person, taking into account § 1.1248–8.
§ 1.1248–3(f)(2)(ii)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(f)(5)(ii)	(during the period such stock was considered to be held by such person by reason of the application of section 1223).	(during the period such stock was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(f)(5)(iv)	(during the period such share (or block) was considered to be held by such person by reason of the application of section 1223).	(during the period such share (or block) was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–7(b)(3)(i)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–7(b)(3)(iii)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–7(b)(4) introductory text	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).

■ **Par. 6.** Section 1.1248–8 is added to read as follows:

§ 1.1248–8 Earnings and profits attributable to stock following certain non-recognition transactions.

(a) *Scope.* This section sets forth rules for the attribution of earnings and profits for purposes of section 1248 and § 1.1248–1(a)(1) and to supplement the rules in §§ 1.1248–2 and 1.1248–3 with respect to—

(1) *Stock that an exchanging shareholder receives, or an acquiring corporation receives, in restructuring transactions.* Except as otherwise provided in this paragraph (a), stock of a foreign corporation that an exchanging shareholder receives, or an acquiring corporation receives, pursuant to a restructuring transaction (as defined in paragraph (b)(1)(vii) of this section) in which the holding period of such stock is determined by application of section 1223(1) or 1223(2), whichever is appropriate. This section shall not apply to an exchange otherwise described in this paragraph (a)(1) if, as a result of the exchange, the exchanging shareholder is required to include in income as a deemed dividend the section 1248 amount pursuant to § 1.367(b)–4(b). See paragraphs (b)(2) and (3) of this section;

(2) *Nonexchanging shareholders.* Stock of a foreign corporation that participates in a restructuring transaction that is held by a non-exchanging shareholder (as defined in paragraph (b)(1)(vi) of this section) in the restructuring transaction. See paragraph (b)(4) of this section;

(3) *Application of section 381.* Stock of a foreign corporation that receives assets in a transfer to which section 361(a) applies in connection with a reorganization described in section 368(a)(1)(A), (C), (D), (F), or (G), or in a distribution to which section 332 applies, and to which section 381(c)(2)(A) and § 1.381(c)(2)–1(a) apply. See paragraph (b)(6) of this section; or

(4) *Section 332 liquidations.* Stock of a foreign corporation that receives the assets and liabilities of a foreign corporation in a complete liquidation described in section 332 if the foreign distributee is a foreign corporate shareholder (as defined in paragraph (b)(1)(v) of this section) of the liquidating corporation. See paragraph (c) of this section.

(b) *Earnings and profits attributable to stock following a restructuring transaction*—(1) *Definitions.* The following definitions apply for purposes of this section:

(i) *Acquired corporation* is a corporation whose stock or assets are acquired in exchange for stock in (or stock in and other property of) either the acquiring corporation or a foreign corporation that controls, within the meaning of section 368(c), the acquiring corporation in a restructuring transaction.

(ii) *Acquiring corporation* is a corporation that acquires the stock or assets of an acquired corporation in a restructuring transaction.

(iii) *Controlled foreign corporation* is a corporation described in either section 953(c)(1)(B) or section 957.

(iv) *Exchanging shareholder* is a person that exchanges—

(A) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 354, 356, or 361(a), stock in an acquired corporation for stock in either a foreign acquiring corporation or a foreign corporation that is in control, within the meaning of section 368(c), of an acquiring corporation (whether domestic or foreign); or

(B) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 351, property (including stock) for stock in a foreign acquiring corporation.

(v) *Foreign corporate shareholder* is a foreign corporation that—

(A) Owns stock of another foreign corporation; and

(B) Has a section 1248 shareholder that is also a section 1248 shareholder of the other foreign corporation.

(vi) *Non-exchanging shareholder* is, at the time the acquiring corporation participates in a restructuring transaction, either a section 1248 shareholder or a foreign corporate shareholder of the acquiring corporation that is not an exchanging shareholder with respect to that corporation.

(vii) *Restructuring transaction* is a transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 351, 354, 356, or 361.

(viii) *Section 1248 shareholder* is any United States person that satisfies the ownership requirements of section 1248(a)(2) and § 1.1248–1(a)(2) with respect to a foreign corporation.

(2) *Earnings and profits attributable to stock that an exchanging shareholder receives in a restructuring transaction.* Where, in a restructuring transaction, an exchanging shareholder receives stock in a foreign corporation, the holding period of which is determined under section 1223(1), and the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign corporation immediately after the restructuring transaction, the earnings and profits attributable to the stock the exchanging shareholder receives shall be determined pursuant to the rules in paragraphs (b)(2)(i), (ii), and (iii) of this section.

(i) *Exchanging shareholder exchanges property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder.* Where the exchanging shareholder exchanges in a restructuring transaction property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder immediately before such transaction, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(1) holding period in that stock that is prior to the restructuring transaction. See paragraph (b)(7) *Example 1* of this section.

(ii) *Exchanging shareholder exchanges stock of a foreign corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder.* Except as provided in paragraph (b)(2)(iii) of this section, where the exchanging shareholder exchanges in a restructuring transaction stock of a foreign acquired corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder immediately before such restructuring transaction, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall be the sum of the earnings and profits attributable to—

(A) The stock of the foreign acquired corporation exchanged (determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, and this section, if applicable) that was accumulated before the restructuring transaction; and

(B) The stock of the foreign corporation that the exchanging shareholder receives in the restructuring transaction (determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, and this section, if applicable), without regard to any portion of the section 1223(1) holding period in that stock that is prior

to the restructuring transaction. See paragraph (b)(7) *Example 2*, *Example 4*, and *Example 6* of this section.

(iii) *Exchanging shareholder receives stock in a foreign corporation that controls a domestic acquiring corporation.* Where the acquiring corporation is a domestic corporation and the exchanging shareholder receives in a restructuring transaction stock in a foreign corporation that controls (within the meaning of section 368(c)) the domestic acquiring corporation, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall consist solely of the amount of earnings and profits attributable to such stock (determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, and this section, if applicable) without regard to any portion of the section 1223(1) holding period in that stock that is prior to the restructuring transaction. See paragraph (b)(7) *Example 5* of this section.

(3) *Earnings and profits attributable to stock in a foreign corporation certain acquiring corporations receive in a restructuring transaction.* Where an acquiring corporation receives, in a restructuring transaction, stock in a foreign acquired corporation, the holding period of which is determined under section 1223(2), and the acquiring corporation is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign acquired corporation immediately after the restructuring transaction, the earnings and profits attributable to the foreign acquired corporation stock that the acquiring corporation receives shall be determined pursuant to the rules in paragraphs (b)(3)(i) and (ii) of this section.

(i) *Stock of a foreign corporation with respect to which the exchanging shareholder is neither a section 1248 shareholder nor a foreign corporate shareholder.* The earnings and profits attributable to the stock of the foreign acquired corporation that the acquiring corporation receives in a restructuring transaction where the exchanging shareholder is neither a section 1248 shareholder nor a foreign corporate shareholder with respect to that foreign acquired corporation immediately before the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(2) holding period in that stock that is prior to the restructuring transaction.

(ii) *Stock of a foreign corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder.* The earnings and profits attributable to the stock of a foreign acquired corporation that the acquiring corporation receives in the restructuring transaction where the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign corporation immediately before the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, with regard to the portion of the section 1223(2) holding period of the stock that the exchanging shareholder took into account for purposes of attributing earnings and profits to that stock (determined in accordance with this section). See paragraph (b)(7) *Example 3*, *Example 5*, and *Example 7* of this section.

(4) *Earnings and profits attributable to stock held by a non-exchanging shareholder in a foreign acquiring corporation.* (i) Except to the extent paragraph (b)(4)(ii) of this section applies, the earnings and profits attributable to stock of a foreign acquiring corporation held by a non-exchanging shareholder immediately prior to a restructuring transaction continue to be attributed to such stock, and the earnings and profits of the acquired corporation accumulated prior to the restructuring transaction attributable to the stock of an acquired corporation are not attributed to the non-exchanging shareholder's stock in the foreign acquiring corporation. See § 1.1248–2 or § 1.1248–3 (whichever is applicable) and, as applicable, paragraph (b)(6) of this section; see also paragraph (b)(7) *Example 2* and *Example 4* of this section.

(ii) Where a non-exchanging shareholder holds stock in a foreign corporation that is also an exchanging shareholder and a foreign acquiring corporation in the same restructuring transaction—

(A) The earnings and profits attributable to such stock shall be the sum of the earnings and profits attributable to the stock of such foreign corporation immediately before the restructuring transaction (including amounts attributed under section 1248(c)(2)) and the earnings and profits attributable to the stock of the foreign acquiring corporation accumulated after the restructuring transaction (including amounts attributed under section 1248(c)(2)); and

(B) Paragraph (b)(6) of this section applies. See paragraph (b)(7) *Example 8* of this section.

(iii) Where the acquiring corporation is a foreign corporate shareholder with respect to stock of a foreign acquired corporation, paragraph (b)(3) of this section shall not apply for purposes of determining the earnings and profits attributable to stock in the foreign acquiring corporation owned by a non-exchanging shareholder thereof (see section 1248(c)(2)). See paragraph (b)(7) *Example 6* of this section.

(5) *Reduction in earnings and profits attributable to stock to prevent multiple inclusions with respect to the same earnings and profits.* To the extent consistent with the principles of section 1248, adjustments to earnings and profits attributable to stock shall be made such that section 1223(1) and (2) and this section are applied in a manner that results in earnings and profits being taken into account only once. Thus, for example, when a controlled foreign corporation sells or exchanges all or part of the stock of another foreign corporation to which earnings and profits are attributable pursuant to this paragraph (b) or paragraph (c) of this section, proportionate reductions shall be made to the earnings and profits attributed to the stock of the selling foreign corporate shareholder owned by a section 1248 shareholder. See paragraph (b)(7) *Example 7* of this section.

(6) *Special rule regarding section 381.* Solely for purposes of determining the earnings and profits (or deficit in earnings and profits) attributable to stock pursuant to this paragraph (b), the earnings and profits of a corporation shall not include earnings and profits that are treated as received or incurred under section 381(c)(2)(A) and § 1.381(c)(2)–1(a). See paragraph (b)(7) *Example 4* of this section.

(7) *Examples.* The application of this paragraph (b) is illustrated by the following examples. Unless otherwise indicated, in the following examples assume that—

(i) There is no immediate gain recognition pursuant to section 367(a)(1) and the regulations under that section (either through operation of the rules or because the appropriate parties have entered into a gain recognition agreement under §§ 1.367(a)–3(b) and 1.367(a)–8);

(ii) There is no income inclusion required pursuant to section 367(b) and the regulations under that section, and all reporting requirements in those regulations are complied with;

(iii) References to earnings and profits are to earnings and profits that would be includible in income as a dividend under section 1248 and the regulations under that section if stock to which the earnings and profits are attributable

were sold or exchanged by its shareholder;

(iv) Each corporation has only a single class of stock outstanding and uses the calendar year as its taxable year; and

(v) Each transaction is unrelated to all other transactions.

Example 1. A section 351 exchange of property other than stock in a foreign corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder. (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC, a foreign corporation, since CFC's formation on January 1, year 3. On December 31, year 5, DC2, a domestic corporation unrelated to DC1, contributes property it has held since January 1, year 1, to CFC in exchange for voting stock of CFC in a restructuring transaction that is an exchange under section 351. The property that DC2 contributes is not stock in a foreign corporation with respect to which DC2 was either a section 1248 shareholder or a foreign corporate shareholder. DC2 receives 80% of the voting stock of CFC in the restructuring transaction and its holding period in that CFC stock, determined pursuant to section 1223(1), began on January 1, year 1. CFC has $100 of accumulated earnings and profits on December 31, year 5. On December 31, year 7, when the accumulated earnings and profits of CFC are $200, DC2, a section 1248 shareholder with respect to CFC, sells its CFC stock.

(ii) *Result.* Under paragraph (b)(2)(i) of this section, the earnings and profits attributable to the CFC stock sold by DC2 are $80. This amount consists of none of the $100 of earnings and profits accumulated by CFC before the restructuring transaction, and 80% of the $100 of earnings and profits of CFC accumulated after the restructuring transaction.

Example 2. A section 351 exchange of controlled foreign corporation stock by a United States person for stock in a controlled foreign corporation in a restructuring transaction. (i) *Facts.* The facts are the same as in *Example 1* except as follows. The property that DC2 contributes is 100% of the stock in CFC2, a foreign corporation. DC2 has owned all the stock of CFC2 since CFC2's formation on January 1, year 2, and CFC2 has $200 of earnings and profits as of December 31, year 5. CFC2 does not accumulate any additional earnings and profits from December 31, year 5, to December 31, year 7. On December 31, year 7, when the accumulated earnings and profits of CFC are $200, DC2, a section 1248 shareholder with respect to CFC, sells its CFC stock. Also on that date, DC1 sells its CFC stock.

(ii) *Result.* (A) *DC2 sale.* Pursuant to paragraph (b)(2)(ii) of this section, the earnings and profits attributable to the CFC stock sold by DC2 are $280. This amount consists of all of the $200 of earnings and profits of CFC2 accumulated before the restructuring transaction (see also section 1248(c)(2)), none of the $100 of earnings and profits accumulated by CFC before the restructuring transaction, and 80% of the $100 of earnings and profits of CFC accumulated after the restructuring transaction.

(B) *DC1 sale.* Pursuant to paragraph (b)(4) of this section, the earnings and profits attributable to the CFC stock sold by DC1, a non-exchanging shareholder in the restructuring transaction, are $120. This amount consists of all of the $100 of earnings and profits of CFC accumulated before the restructuring transaction, none of the $200 of earnings and profits of CFC2 accumulated before the restructuring transaction, and 20% of the $100 of earnings and profits of CFC accumulated after the restructuring transaction.

Example 3. A section 351 exchange of controlled foreign corporation stock by a United States person for stock in a domestic corporation in a restructuring transaction. (i) *Facts.* DC1, a domestic corporation, has owned all of the stock of CFC, a foreign corporation, since CFC's formation on January 1, year 1. DC1 has also owned all the stock of DC2, a domestic corporation, since DC2's formation on January 1, year 1. On December 31, year 2, DC1 contributes the stock of CFC to DC2 in exchange for stock in DC2 in a restructuring transaction that is an exchange described in section 351. On December 31, year 2, CFC has $100 of accumulated earnings and profits. DC2 has a basis in the CFC stock determined under section 362, and is considered to have held the CFC stock since January 1, year 1, pursuant to section 1223(2). On December 31, year 4, when the accumulated earnings and profits of CFC are still $100, DC2 sells its CFC stock.

(ii) *Result.* Under paragraph (b)(3)(ii) of this section, $100 of accumulated earnings and profits of CFC is attributable to the stock of CFC sold by DC2, even though DC2 did not hold the stock of CFC during the time CFC accumulated the earnings and profits.

Example 4. Acquisition of a controlled foreign corporation by a controlled foreign corporation in a reorganization described in section 368(a)(1)(C) (or section 368(a)(1)(B)). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. DC2, a domestic corporation unrelated to DC1, has owned all of the stock of CFC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that is a reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets to CFC2 in exchange for 25% of the voting stock of CFC2. CFC1 distributes the CFC2 stock to DC1 and the CFC1 stock is cancelled. DC1's holding period in the CFC2 stock, determined under section 1223(1), begins on January 1, year 1. On December 31, year 3, CFC1 has $100 of accumulated earnings and profits and CFC2 has $200 of accumulated earnings and profits. CFC2 succeeds to the $100 of CFC1 accumulated earnings and profits in the reorganization under section 381. From January 1, year 4 to December 31, year 5, CFC2 incurred a deficit in earnings and profits in the amount of ($200). On December 31, year 5, both DC1 and DC2 sell their stock in CFC2.

(ii) *Result.* (A) *DC1.* Pursuant to paragraph (b)(2)(ii) of this section, $50 of earnings and profits is attributable to the CFC2 stock sold by DC1. This amount consists of $100 of CFC1's earnings and profits accumulated before the restructuring transaction, reduced by 25% of CFC2's ($200) post-restructuring transaction deficit in earnings and profits. None of the $200 of CFC2's earnings and profits accumulated by CFC2 prior to the reorganization is attributed to the CFC2 stock sold by DC1. Also, none of the earnings and profits CFC2 succeeded to under section 381 is attributed to the CFC2 stock sold by DC1, pursuant to paragraph (b)(6) of this section.

(B) *DC2.* Pursuant to paragraph (b)(4) of this section, there is $50 of accumulated earnings and profits attributable to the CFC2 stock sold by DC2. This amount consists of all of the $200 of CFC2's earnings and profits accumulated by CFC2 prior to the reorganization, reduced by 75% of CFC2's deficit in earnings and profits in the amount of ($200) incurred after the restructuring transaction. None of the $100 of CFC1 accumulated earnings and profits succeeded to under section 381 is attributable to the CFC2 stock sold by DC2, pursuant to paragraph (b)(6) of this section.

(C) *Section 368(a)(1)(B) reorganization.* If, instead of DC1 acquiring its 25% interest in CFC2 pursuant to a reorganization described in section 368(a)(1)(C), DC1 had transferred the stock of CFC1 to CFC2 in exchange for 25% of the voting stock of CFC2 in a reorganization described in section 368(a)(1)(B), the results would be the same as described in paragraphs (ii) (A) and (B) of this *Example 4.*

Example 5. Acquisition of the stock of a foreign corporation that controls a domestic acquiring corporation in a triangular reorganization described in section 368(a)(1)(C). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 has owned all the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. FC, a foreign corporation that is not a controlled foreign corporation, has owned all of the stock of DC2, a domestic corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that was a triangular reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets, including the CFC2 stock, to DC2 in exchange for 60% of the voting stock of FC. CFC1 transfers the voting stock of FC to DC1 and the CFC1 stock is cancelled. Pursuant to section 1223(1), DC1 is considered to have held the stock of FC since January 1, year 1. Under section 1223(2), DC2 is considered to have held the stock of CFC2 since January 1, year 1. On December 31, year 3, CFC1 has $100 of earnings and profits, CFC2 has $300 of earnings and profits, and FC has $200 of earnings and profits. DC1 includes the $100 all earnings and profits amount attributable to its CFC1 stock in income as a deemed dividend under § 1.367(b)–3 upon the exchange of CFC1 stock for FC stock. Pursuant to the lower-tier earnings exclusion of § 1.367(b)–2(d)(3)(ii), that amount does not include the $300 of earnings and profits of CFC2. From January 1, year 4, until December 31, year 5, FC (now a controlled

foreign corporation) accumulates an additional $50 of earnings and profits. From January 1, year 4 until December 31, year 5, CFC2 accumulates an additional $100 of earnings and profits. On December 31, year 5, DC1 sells its stock in FC and DC2 sells its stock in CFC2.

(ii) *Result.* (A) *DC1.* Pursuant to paragraph (b)(2)(iii) of this section, there is $30 of earnings and profits attributable to the stock of FC sold by DC1. This amount consists of 60% of the $50 of earnings and profits accumulated by FC after the restructuring transaction, and none of the earnings and profits accumulated by CFC1, CFC2, or FC before the restructuring transaction.

(B) *DC2.* Pursuant to paragraph (b)(3)(ii) of this section, there is $400 of earnings and profits attributable to the stock of CFC2 sold by DC2. This amount consists of all of the earnings and profits accumulated by CFC2 during DC2's section 1223(2) holding period.

Example 6. Acquisition of the stock of a foreign corporation that controls a foreign acquiring corporation in a reorganization described in section 368(a)(1)(C). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 has owned all the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. FC, a foreign corporation that is not a controlled foreign corporation, has owned all of the stock of FC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that was a triangular reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets, including the CFC2 stock, to FC2 in exchange for 60% of the voting stock of FC. CFC1 transfers the voting stock of FC to DC1 and the CFC1 stock is cancelled. Pursuant to section 1223(1), DC1 is considered to have held the stock of FC since January 1, year 1. Under section 1223(2), FC2 is considered to have held the stock of CFC2 since January 1, year 1. On December 31, year 3, CFC1 has $100 of earnings and profits, CFC2 has $300 of earnings and profits, FC has $200 of earnings and profits, and FC2 has no earnings and profits. From January 1, year 4, until December 31, year 5, FC (now a controlled foreign corporation) accumulates an additional $50 of earnings and profits. From January 1, year 4 until December 31, year 5, CFC2 accumulates an additional $100 of earnings and profits. FC2, a controlled foreign corporation after the restructuring transaction, accumulates $100 of earnings and profits from January 1, year 4, until December 31, year 5. On December 31, year 5, DC1 sells its stock in FC.

(ii) *Result.* Pursuant to paragraphs (b)(2)(ii) and (b)(4)(iii) of this section, there is $550 of earnings and profits attributable to the stock of FC sold by DC1. This amount consists of all $400 of the CFC1 and CFC2 earnings and profits accumulated before the restructuring transaction (see also section 1248(c)(2)), and 60% of the $250 of the earnings and profits accumulated by FC, FC2, and CFC2 after the restructuring transaction.

Example 7. Acquisition of controlled foreign corporation stock by a controlled foreign corporation in a reorganization described in section 368(a)(1)(B), followed by a sale of the acquired stock by the acquiring controlled foreign corporation. (i) *Facts.* DC1, a domestic corporation, has owned all of the outstanding stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 has owned all of the outstanding stock of CFC3, a foreign corporation, since its formation on January 1, year 1. DC2, a domestic corporation unrelated to DC1, has owned all of the outstanding stock of CFC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that is a reorganization described in section 368(a)(1)(B), CFC1 transfers all of the stock of CFC3 to CFC2 in exchange for 40% of CFC2's stock. On December 31, year 3, CFC2 and CFC3 have, respectively, $40 and $20 of earnings and profits. On December 31, year 5, when the accumulated earnings and profits of CFC3 are $50 ($20 of earnings and profits as of December 31, year 3, plus $30 of earnings and profits generated from January 1, year 4, through December 31, year 5), CFC2 sells the stock of CFC3 in a transaction to which section 964(e) applies.

(ii) *Result.* (A) *CFC2.* Pursuant to paragraph (b)(3)(ii) of this section, there is $50 of earnings and profits attributable to the CFC3 stock sold by CFC2. This amount consists of the accumulated earnings and profits attributable to CFC2's entire section 1223(2) holding period in the CFC3 stock.

(B) *CFC1, DC2, and DC1.* Under paragraph (b)(5) of this section, the earnings and profits attributable to the CFC2 stock held by CFC1 and DC2, and the earnings and profits attributable to the CFC1 stock held by DC1, will be reduced (regardless of whether CFC2 recognizes gain on its sale of CFC3 stock).

(*1*) *CFC1.* The earnings and profits attributable to the CFC2 stock held by CFC1 will be reduced by $32, or the amount of earnings and profits as of December 31, year 5, that would have been attributable to the CFC2 stock held by CFC1 pursuant to paragraph (b)(2)(ii) of this section. This amount consists of all of the $20 of earnings and profits accumulated by CFC3 before the restructuring transaction and 40% of the $30 of earnings and profits accumulated by CFC3 after the restructuring transaction (.40 × $30 = $12).

(*2*) *DC1.* The earnings and profits attributable to the CFC1 stock held by DC1 will also be reduced by $32, or the amount of earnings and profits that would have been attributable to the CFC1 stock held by DC1 as of December 31, year 5.

(*3*) *DC2.* The earnings and profits attributable to the CFC2 stock held by DC2 will be reduced by $18, or the amount of earnings and profits that would have been attributable to the CFC2 stock held by DC2 as of December 31, year 5, under paragraph (b)(4) of this section. This amount consists of 60% of the $30 (.60 × $30 = $18) of earnings and profits accumulated by CFC3 after the restructuring transaction.

(C) *Partial sale by CFC2.* If, instead of selling 100% of the CFC3 stock, on December 31, year 5, CFC2 sells only 50% of its CFC3 stock, paragraph (b)(5) of this section requires CFC1 to reduce the earnings and profits of CFC3 attributable to its CFC2 stock to $16. Similarly, DC1 would be required to reduce the earnings and profits of CFC3 attributable to its CFC1 stock by $16. Paragraph (b)(5) of this section also requires DC2 to reduce the CFC3 earnings and profits attributable to its CFC2 stock by $9. These reductions occur without regard to whether CFC2 recognizes gain on its sale of CFC3 stock.

Example 8. Acquisition of the assets of a lower-tier controlled foreign corporation by an upper-tier controlled foreign corporation in a restructuring transaction described in section 368(a)(1)(C). (i) *Facts.* DC, a domestic corporation, has owned all the stock of CFC1, a controlled foreign corporation, since its formation on January 1, year 1. CFC1 is a holding company that has owned 79% of the stock of CFC2, a controlled foreign corporation, since its formation on January 1, year 1. The other 21% of CFC2 stock is owned by X, an unrelated party. On December 31, year 1, CFC2 has $200 of earnings and profits. On December 31, year 1, CFC1 has no accumulated earnings and profits. On December 31, year 1, pursuant to a restructuring transaction described in section 368(a)(1)(C), CFC2 transfers all its properties to CFC1. In exchange, CFC1 assumes the liabilities of CFC2 and transfers to CFC2 voting stock representing 21% of the stock of CFC1. CFC2 distributes the voting stock to X and liquidates. The liabilities assumed do not exceed 20% of the value of the properties of CFC2. From January 1, year 2, to December 31, year 3, CFC1 accumulates $100 of earnings and profits. On December 31, year 3, DC sells its CFC1 stock.

(ii) *Result.* Pursuant to paragraph (b)(4)(ii) of this section, there is $237 of earnings and profits attributable to DC's CFC1 stock. This amount consists of 79% of CFC2's $200 of earnings and profits accumulated before the restructuring transaction (see section 1248(c)(2)), and 79% of CFC1's $100 of earnings and profits accumulated after the restructuring transaction. Pursuant to paragraph (b)(6) of this section, none of CFC2's $200 of earnings and profits to which CFC1 succeeded under section 381 would be attributable to DC's CFC1 stock.

(c) *Earnings and profits attributable to stock of a foreign distributee corporation that is a foreign corporate shareholder with respect to a foreign liquidating corporation—(1) General rule.* If a foreign corporation (liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (distributee), and immediately before the liquidation the distributee was a foreign corporate shareholder with respect to the liquidating foreign corporation, the amount of earnings and profits attributable to the distributee stock upon its subsequent sale or exchange will be determined under this paragraph (c)(1). The earnings and profits attributable will be the sum of the earnings and profits attributable to the stock of the distributee immediately before the liquidation (including

amounts attributed under section 1248(c)(2)) and the earnings and profits attributable to the stock of the distributee accumulated after the liquidation (including amounts attributed under section 1248(c)(2)).

(2) *Special rule regarding section 381.* Solely for purposes of determining the earnings and profits (or deficit in earnings and profits) attributable to stock under this paragraph (c), the attributed earnings and profits of a corporation shall not include earnings and profits that are treated as received or incurred pursuant to section 381(c)(2)(A) and § 1.381(c)(2)–1(a).

(3) Example. (i) *Facts.* DC, a domestic corporation, has owned all of the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 is an operating company that has owned all of the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. On December 31, year 2, CFC1 has $200 of accumulated earnings and profits and CFC2 has a ($200) deficit in earnings and profits. On December 31, year 2, CFC2 distributes all of its assets and liabilities to CFC1 in a liquidation to which section 332 applies. From January 1, year 3, until December 31, year 4, CFC1 accumulates no additional earnings and profits. On December 31, year 4, DC sells its stock in CFC1.

(ii) *Result.* Pursuant to paragraph (c)(1) of this section, there are no earnings and profits attributable to DC's CFC1 stock. This amount consists of the sum of the earnings and profits attributable to the CFC1 stock immediately before the liquidation (100% of the $200 accumulated earnings and profits of CFC1 and 100% of CFC2's ($200) deficit in earnings and profits) and the amount of earnings and profits accumulated after the section 332 liquidation (see also section 1248(c)(2)).

(d) *Effective/applicability date.* This section applies to income inclusions that occur on or after July 30, 2007.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 16, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–14466 Filed 7–27–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0236; FRL–8444–3]

Partial Withdrawal of Direct Final Rule Revising the California State Implementation Plan, San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial withdrawal.

SUMMARY: On May 30, 2007 (72 FR 29886), EPA published a direct final approval of revisions to the California State Implementation Plan (SIP). These revisions concerned San Joaquin Valley Air Pollution Control District (SJVAPCD) Rule 4307, Boilers, Steam Generators and Process Heaters—2.0 MMBtu/hr to 5.0 MMBtu/hr; Rule 4308, Boilers, Steam Generators and Process Heaters—0.075 MMBtu/hr to 2.0 MMBtu/hr; Rule 4309, Dryers, Dehydrators, and Ovens; Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters; and Rule 4905, Natural Gas-Fired, Fan-Type Residential Central Furnaces. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by June 29, 2007, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments. Consequently, with this revision we are withdrawing the direct final approval of SJVAPCD Rule 4352. EPA will either address the comments in a subsequent final action based on the parallel proposal also published on May 30, 2007 (72 FR 29901), or repropose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on a subsequent final action. The other rules approved in the May 30, 2007 direct final action, SJVAPCD Rules 4307, 4308, 4309, and 4905, are not affected by this partial withdrawal and are incorporated into the SIP as of the effective date of the May 30, 2007 direct final action.

DATES: This rule and withdrawal are effective July 30, 2007.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2007–0236 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 10, 2007.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.220 is amended by revising paragraph (c)(347)(i)(A)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(347) * * *

(i) * * *

(A) * * *

(*1*) Rule 4307, adopted on April 20, 2006.

* * * * *

[FR Doc. E7–14679 Filed 7–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0292; FRL–8442–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Indiana's requests to amend its State Implementation Plan (SIP) for control of particulate matter in 326 IAC 6.5–7–13. Indiana submitted the SIP revision requests to EPA on November 1, 2005 and March 20, 2007. The revisions would change the source name from St.

Mary's to Holy Cross Services Corporation (Saint Mary's Campus), and clarify and revise existing particulate matter (PM) emission limits for the boilers at that source to reflect current operating conditions. These revisions will not result in an increase in PM.

DATES: This direct final rule will be effective September 28, 2007, unless EPA receives adverse comments by August 29, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0292, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0292. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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 and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *Hatten.Charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. To Whom Does This Action Apply?

This action applies to Holy Cross Services Corporation (Saint Mary's Campus), Notre Dame, Indiana.

II. What Is EPA Approving?

EPA is approving revisions to Indiana's PM SIP for the three boilers located in St. Joseph County, Notre Dame, Indiana. The revisions address Title 326 of the Indiana Administrative Code (IAC), Rule 6.5–7, Section 13, to clarify and amend existing PM emission limits. They also change the source name from St. Mary's to Holy Cross Services Corporation (Saint Mary's Campus).

Indiana held public hearings on these revisions February 2, and June 1, 2005; June 7, and August 2, 2006.

III. What Are the Changes From the Current Rule?

On March 22, 2006 (71 FR 14383), EPA published a direct final rule approving revisions to the Indiana SIP in 326 IAC 6.5–7 to relocate and recodify PM emission limits for all sources in St. Joseph County, Indiana. Today's action revises 326 IAC 6.5–7, Section 13, which contains particulate emission limits for the boilers at St. Mary's College in Notre Dame, Indiana, to reflect current operating conditions and ownership by Holy Cross Services Corporation of those boilers.

Currently, SIP rule 326 IAC 6.5–7–13 identifies St. Mary's College as the owner, operator and permittee of the subject boilers. It also incorrectly lists boiler number 1 as 100% natural gas-fired, and boilers number 2 and 3 as coal-fired. According to Indiana, however, boilers numbers 1 and 2 are actually gas-fired, with the capability of burning number 2 fuel oil as a back-up, while boiler number 3 exclusively burns natural gas. The revised rule corrects this error. It also tightens the applicable PM limits for the two boilers that have oil-burning capability (boilers number 1 and 2): from 0.110 lbs/MMBTU (12.90 tons/year) to 0.014 lbs/MMBTU (3.9 tons/year).

Finally, the SIP revision amends 326 IAC 6.5–7–13 by correctly identifying the owner, operator and permittee of the St. Mary's boilers as Holy Cross Services.

IV. What Action is EPA Taking?

EPA is approving source-specific revisions to Indiana's PM SIP in 326 IAC 6.5–7 to change the name of the owner, operator and permittee of the three boilers at St. Mary's College to Holy Cross Services Corporation (Saint Mary's Campus), and to revise the PM limits to reflect current operating conditions of the boilers at St. Mary's College.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the

state plan if relevant adverse written comments are filed. This rule will be effective September 28, 2007 without further notice unless we receive relevant adverse written comments by August 29, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 28, 2007.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, PM, Reporting and recordkeeping requirements.

Dated: July 11, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. § 52.770 is amended by adding paragraph (c)(180) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(180) On November 1, 2005, and supplemented on March 20, 2007, the

State of Indiana submitted a source specific revision to its state implementation plan for control of particulate matter in Title 326 of the Indiana Administrative Code (IAC), Rule 6.5–7, Section 13, which contains particulate matter emission limits for Holy Cross Services Corporation, to reflect current operating conditions of the boilers at St. Mary's College, located in Notre Dame, Indiana. The revision in 326 IAC 6.5–7–13 also changes the source name from St. Mary's to Holy Cross Services Corporation (Saint Mary's Campus).

(i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6.5: PM Limitations Except Lake County, Rule 7: St. Joseph County, Section 13: Holy Cross Services Corporation (Saint Mary's Campus). Approved by the Attorney General January 18, 2007. Approved by the Governor January 23, 2007. Filed with the Publisher January 26, 2007. Published on the Indiana Register Web site February 14, 2007, Document Identification Number (DIN):20070214–IR–326060121FRA. Effective February 25, 2007.

* * * * *

[FR Doc. E7–14476 Filed 7–27–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2007–0252; FRL–8446–3]

Approval and Promulgation of Implementation Plans; Texas; Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve a revision to the Texas State Implementation Plan (SIP) submitted by the State of Texas on August 4, 2006, as the Texas Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Annual Abbreviated SIP. The abbreviated SIP revision EPA is approving includes the Texas methodologies for allocation of annual NO_X allowances for Phase 1 of CAIR, the control periods 2009 through 2014, and for allocating allowances from the compliance supplement pool (CSP) in the CAIR NO_X annual trading program. EPA has determined that the Texas CAIR NO_X Annual Abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision. Upon the effective date of approval of the Texas CAIR NO_X Annual Abbreviated SIP revision, EPA by ministerial action will note in the Texas CAIR NO_X Annual Federal Implementation Plan's (FIP) incorporated regulations that the Texas rules for annual NO_X allowances under Phase 1 of CAIR and allocating allowances from the CSP apply, rather than the Federal FIP rules.

The intended effect of this action is to reduce NO_X emissions from the State of Texas that are contributing to nonattainment of the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS or standard) in downwind states. This action is being taken under section 110 of the Federal Clean Air Act (the Act or CAA).

DATES: This rule is effective on September 28, 2007 without further notice, unless EPA receives relevant adverse comment by August 29, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2007–0252, by one of the following methods:

(1) *http://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–2007–0252. 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:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

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 Taking?

On April 4, 2006, the State of Texas submitted a revision to the Texas SIP. The submittal consists of new regulations to implement the NO_X Annual and SO_2 CAIR programs in the state. The affected state regulations that we are approving today as part of the Texas CAIR NO_X Annual Abbreviated SIP are 30 TAC, Chapter 101, Subchapter H, Division 7, sections 101.503, 101.504(a)(1), 101.504(b), 101.506(a)(1), 101.506(b)(1), 101.506(c)–(f), and 101.508. EPA is taking a direct final action to approve the State's NO_X annual allocation methodology for Phase 1 (the control periods 2009 through 2014) and the State's methodology for allocating the compliance supplement pool (CSP) in the CAIR NO_X annual trading program, as an abbreviated revision to the Texas SIP. EPA is approving the Texas abbreviated SIP revision as meeting 40 CFR 51.123(p)(1) and (p)(2). We will be taking action on the remaining parts of the Texas NO_X Annual and SO_2 CAIR SIP revision submittal at a later date and in future **Federal Register**s. Texas is not subject to the CAIR NO_X ozone season trading program. Please see the Technical Support Document (TSD) for further information. The TSD is available as specified in the section of this document identified as **ADDRESSES**.

The provisions of the Texas CAIR NO_X Annual Federal Implementation Plan (FIP) at 40 CFR 52.2283 require owners and operators of NO_X sources located in Texas to meet the Federal NO_X annual trading program found at 40 CFR part 97. This Federal trading program's rules include provisions at 40 CFR 97.144(a) and (b) that if EPA approves the Texas abbreviated SIP revision for NO_X annual and CSP allocation methodologies, then the Federal NO_X annual and CSP allocation methodologies no longer apply. Instead, if EPA approves the Texas NO_X annual allocation methodology into the Texas SIP, then EPA under 40 CFR 52.2283 and 97.144(a) will not make allocations for the CAIR NO_X sources in Texas but will use the Texas SIP rules for allocating annual NO_X allowances to sources in Texas for Phase 1 of CAIR (2009–2014). The Texas NO_X methodology for allocating the CSP in the CAIR NO_X Annual Trading Program will be used to allocate allowances from the CSP, instead of the federal methodology for allocating allowances from the CSP. EPA under 40 CFR 52.2283 and 97.144(b) will not make allocations for the CSP for CAIR NO_X sources in Texas and will record the allocations of the Texas CSP made under the approved SIP revision.

If EPA's direct final action approving the Texas abbreviated SIP becomes effective, then EPA is not required to take any rulemaking action to change the Federal CAIR NO_X annual trading program in 40 CFR part 97 or to change the Texas CAIR FIP for NO_X annual emissions in 40 CFR 52.2283. Rather EPA, by ministerial action, simply notes in Appendix A, 1 and 2, to Subpart EE of 40 CFR part 97, that Texas has an approved SIP revision for NO_X annual allowances for Phase 1 and for NO_X allowance allocations from the Texas CSP. Since the Federal CAIR NO_X annual trading program's rules at 40 CFR part 97 provide for automatic revision of the Texas CAIR FIP for annual NO_X emissions upon approval of such an abbreviated SIP revision, the Texas rules for annual NO_X allowances would apply, rather than the Federal rules, upon the effective date of approval.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on September 28, 2007 without further notice unless we receive relevant adverse comment by August 29, 2007. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Is the Regulatory History of the 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 Texas significantly contributed to nonattainment of the $PM_{2.5}$ standard in Illinois, resulting in Texas being subject to the SO_2 and annual NO_X requirements of CAIR. There are no punitive consequences for Texas failing to submit SO_2 and NO_X Annual 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, 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). 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 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), 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. Texas was not subject to the NO_X SIP Call and is not subject to the NO_X ozone season requirements of CAIR; 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 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, Texas asked EPA to process the submittal as an abbreviated SIP revision while the Texas Legislature considered changes in the State's CAIR authority. Texas anticipates submitting a revised NO_X and SO_2 CAIR SIP later for full approval by EPA.

V. What Is EPA's Analysis of Texas's CAIR NO_X Annual Abbreviated SIP Submittal?

A. State Budget for NO_X Annual Allowance Allocations

The CAIR NO_X annual budget for Texas was developed from historical heat input data for EGUs. Using these data, EPA calculated annual 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 Texas NO_X annual budget from the regional budgets using Texas heat input data adjusted by fuel factors

The CAIR SIP requirements and the Texas CAIR NO_X annual FIP establish the budgets for Texas as 181,014 tons of NO_X annual emissions for 2009–2014 and 150,845 tons of NO_X annual emissions in 2015 and thereafter. Texas's submitted rules at 30 TAC, Chapter 101, Subchapter H, Division 7, section 101.503(a) establish that the Texas NO_X annual budgets are as listed in 40 CFR 51.123 and 96.140 (181,014 tons in 2009–2014 and 150,845 tons in 2015 and thereafter). The Texas abbreviated SIP revision, being approved today, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the Texas CAIR NO_X Annual FIP. In short, the Texas abbreviated SIP revision only affects allocations of NO_X annual allowances under the established budget for 2009–2014.

B. CAIR NO_X Annual Cap-and-Trade Program

The CAIR NO_X annual 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 FIPs are similar, there are some differences. For example, the NO_X Annual FIPs provide for a 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.

Texas is subject to the CAIR FIP for $PM_{2.5}$. This $PM_{2.5}$ CAIR FIP for Texas, 40 CFR 52.2283 and 52.2284, requires owners or operators of each NO_X and SO_2 source located in Texas to meet the requirements of the Federal CAIR NO_X Annual 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 FIP's trading programs. The August 4, 2006, submission from Texas is such an abbreviated SIP revision and is for the NO_X annual trading program.

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 Texas was not included in the NO_X SIP Call trading program and is not subject to the NO_X ozone season provisions of CAIR, Texas does not have or need the option of expanding the applicability provisions of the CAIR NO_X Ozone Season Trading Program.

D. NO_X Annual Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIPs' NO_X annual trading program, NO_X annual 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 trading program 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, Texas has chosen to replace the provisions of the Texas CAIR NO_X Annual FIP concerning the allocation of NO_X annual allowances for Phase 1 (2009–2014) with its own methodology. The Texas Commission on Environmental Quality was directed by House Bill 2481 of the 79th Texas Legislature to establish regulations that will allocate NO_X allowances at no cost to the CAIR subject units in Texas. Accordingly, the TCEQ has adopted provisions establishing the annual NO_X allocation methodology at 30 TAC, Chapter 101, Subchapter H, Division 7, sections 101.503, 101.504, and 101.506.

Section 101.503(a) establishes that the Texas NO_X Annual budgets are as listed in 40 CFR 96.140 (181,014 tons in 2009–2014 and 150,845 tons in 2015 and thereafter). Additionally, section 101.503(b) establishes that the Texas NO_X Annual Trading Program will have a new unit set-aside of 9.5 percent of the NO_X trading budget for both Phase 1 and Phase 2 of CAIR. (We are not taking action today on the Phase 2 allowance allocation methodology. Please see the TSD for further information.)

Section 101.504 establishes the dates by which the TCEQ Executive Director must submit NO_X annual allocations to EPA for recordation in CAIR compliance accounts. Per section 101.504(a)(1), the TCEQ Executive Director will submit

NO_X allowances for units commencing operation before January 1, 2001 (referred to as existing units), by October 31, 2006 for the 2009–2014 control periods. Allocations for these existing units will be distributed proportionally based on the unit's share of the total baseline heat input according to section 101.506(c). The baseline heat input, calculated per section 101.506(b)(1), for each unit is the average of the three highest amounts of the unit's adjusted control period heat input for 2000–2004. A unit's adjusted control period heat input is found by multiplying the control period heat input by a fuel-adjustment factor as follows: 0.90 if the unit is coal-fired during the year; 0.50 if the unit is natural gas-fired during the year; and 0.30 if the unit is not coal or natural gas-fired during the year. Section 101.506(f) provides that a unit's control period heat input, and a unit's status as coal-fired or natural gas-fired for a calendar year must be determine in accordance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75 to the extent the unit was otherwise subject to the requirements of part 75 for the year. Or, if a unit was not otherwise subject to part 75, the best available data reported to the TCEQ Executive Director can be used.

Under section 101.504(b), the TCEQ Executive Director will submit NO_X allowances for units commencing operation on or after January 1, 2001 (referred to as new units), by October 31 of the applicable control period, beginning in 2009. Section 101.506(b)(1) specifies that for each control period in 2009–2014, allowances for new units are allocated from the 9.5 percent new unit set-aside. The new unit set aside allocation methodology is outlined in section 101.506(d). For the first control period in which a CAIR NO_X unit commences commercial operation, such unit will not receive a NO_X allocation from the new unit set-aside. The CAIR designated representative of a new unit must submit a written request for new unit allowances by July 1 of the first control period for which the allowance is requested and after the date that the unit commences commercial operation. The request for allowances from the new unit set-aside cannot exceed the unit's total tons of NO_X emissions as reported to EPA for the calendar year immediately preceding such control period. The TCEQ Executive Director will review all requests for allowances from the new unit set-aside and distribute proportionally based on a unit's share of the total requested allowances. If allowances remain in the new unit set-aside after the TCEQ Executive Director has made allocations to the new units, the Executive Director will proportionally allocate the remaining allowances to existing units according to the provisions of section 101.506(e). Like the requirements for the existing units, the Texas allocation methodology at 101.506(f) requires that the part 75 monitoring, recordkeeping, and reporting requirements be used to determine a unit's total tons of NO_X emissions during a calendar year to the extent the unit was otherwise subject to part 75. Or, if a unit was not otherwise subject to part 75, the best available data reported to the TCEQ Executive Director can be used.

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; Texas's share of the CSP is 772 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 a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR and the Texas CAIR NO_X Annual FIP's provisions allocate 772 NO_X allowances to the Texas CSP (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, Texas has chosen to modify the provisions of the Texas CAIR NO_X Annual FIP concerning the allocation of allowances from the CSP. The Texas rules distribute CSP allowances using an allocation methodology that is substantively identical to the provisions in 40 CFR 96.143. The provisions for the allocation of CSP allowances in the Texas program are found at section 101.508 of 30 TAC Chapter 101. Section 101.508 authorizes the Texas Commission on Environmental Quality Executive Director to allocate for the control period in 2009 up to the amount of CSP allowances designated for Texas in 40 CFR 96.143 (772 tons of NO_X). The CSP allowances may be allocated, upon request by a CAIR unit's designated representative, to (1) A unit that has made early NO_X emission reductions in 2007 and 2008, or (2) to a CAIR unit whose compliance during the 2009 control period would create an undue risk to the reliability of electricity supply during such control period. In each instance, the CAIR designated representative of a CAIR unit must submit a written request for CSP allowances to the TCEQ Executive Director by July 1, 2009. The TCEQ Executive Director will determine allocations of the CSP and submit this information to EPA by November 30, 2009.

F. Individual Opt-In Units

The opt-in provisions of the CAIR and the States 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, Texas has chosen not to allow non-EGUs to participate in the Texas CAIR FIP NO_X annual trading program. Texas is not subject to the CAIR NO_X ozone season FIP so the opt-in provisions for the CAIR FIP NO_X ozone season trading program are not applicable. We are not taking any action today on the Texas CAIR SO_2 SIP submittal.

VI. Final Action

EPA is approving a revision to the Texas SIP, the Texas CAIR NO_X Annual Abbreviated SIP revision, submitted on August 4, 2006, by the State of Texas (Texas regulations, 30 TAC, Chapter 101, Subchapter H, Division 7, sections 101.503, 101.504(a)(1), 101.504(b), 101.506(a)(1), 101.506(b)(1), and 101.506(c)–(f), and 101.508. Texas is covered by the $PM_{2.5}$ CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO_2 and NO_X annual emissions. Under this abbreviated SIP revision and consistent with the flexibility given to Texas in its CAIR NO_X Annual FIP's provisions, the Texas provisions for allocating allowances under the Texas CAIR FIP's NO_X annual trading program for Phase 1 (2009–2014) of CAIR are approved as part of the Texas SIP. In addition, Texas provisions that establish a methodology for allocating NO_X allowances in the CSP are approved as part of the Texas SIP. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p)(1) and (2) with regard to NO_X annual emissions and NO_X CSP allocations. EPA is not making any changes to the Texas CAIR NO_X Annual FIP's provisions, except to the extent that if EPA's direct final action on the Texas abbreviated SIP revision becomes effective, then EPA, by ministerial action, will note in Appendix A, 1 and 2, to Subpart EE of part 97, that Texas has an approved SIP revision for NO_X annual allowance allocations for Phase 1 and for NO_X allowance allocations from the Texas CSP.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and 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 rule is not subject to Executive Order 13045 because it would approve a State program. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this 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 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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.

Dated: July 16, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

■ 40 CFR parts 52 and 97 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. Section 52.2270 is amended as follows:

■ a. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, by adding in numerical order a new entry for Division 7—Clean Air Interstate Rule.

■ b. In paragraph (e) the table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding a new entry at the end for the Texas Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program Abbreviated SIP Revision.

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
* *	*	*	*	*
Subchapter H—Emissions Banking and Trading				
* *	*	*	*	*
Division 7—Clean Air Interstate Rule				
Section 101.503	Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget.	07/12/06	07/30/07 [Insert *FR* page number where document begins]	
Section 101.504	Timing Requirements for Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations.	07/12/06	07/30/07 [Insert *FR* page number where document begins]	Subsections 101.504(a)(2), 101.504(a)(3), 101.504(a)(4), 101.504(c), and 101.504(d) NOT IN SIP.
Section 101.506	Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations.	07/12/06	07/30/07 [Insert *FR* page number where document begins]	Subsections 101.506(a)(2), 101.506(b)(2), 101.506(b)(3), and 101.506(g) NOT IN SIP.
Section 101.508	Compliance Supplement Pool	07/12/06	07/30/07 [Insert *FR* page number where document begins]	
* *	*	*	*	*

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	*	*	*	*
Texas Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program Abbreviated SIP Revision.	Statewide	07/12/06	07/30/07 [Insert *FR* page number where document begins]	Only CAIR Phase I NO_X Annual and CSP Allocations approved into SIP.
* *	*	*	*	*

* * * * *

PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to Subpart EE is amended by adding an entry for "Texas" to paragraphs 1. and 2. to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. * * *

Texas (for control periods 2009–2014)

2. * * *

Texas

[FR Doc. E7–14485 Filed 7–27–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 145
Monday, July 30, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Docket No. AMS–CN–07–0094; CN–07–006]

Cotton Research and Promotion Program: Procedures for Conduct of Sign-Up Period

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. The amendments would update various dates, name changes, addresses, and make other administrative changes.

DATES: Comments must be received on or before August 9, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639–S, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through *www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639–S, Washington, DC 20250–0224 during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639–S, Washington, DC 20250–0224, telephone (202) 720–6603, facsimile (202) 690–1718, or e-mail at *Shethir.Riva@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

There are currently approximately 19,000 producers, and approximately 14,000 importers that are subject to the order. The majority of these producers and importers are small businesses under the criteria established by the Small Business Administration.

Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 total valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This proposed rule would provide those persons who are not in favor of the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements for producers and importers are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum, and for the 1997 and 2001 sign-up period. The 1997 and 2001 sign-ups did not generate the required number of signatures to hold another referendum. The amendments proposed in this action would update various dates, name changes, addresses, and make other miscellaneous changes.

The proposed sign-up procedures would not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility. The information collection requirements under the Paperwork Reduction Act are minimal.

Paperwork Reduction Act

The information collections proposed by this rule will be carried out under the Office of Management and Budget (OMB) Control Number 0581–0093. This rule will not add to the overall burden currently approved by OMB and assigned OMB Control Number 0581–0093 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This OMB Control Number is referenced in Section 1205.541 of the regulations.

Background

The 1991 amendments to the Cotton Research and Promotion Order (7 CFR 1205 *et seq.*) were implemented following the July 1991 referendum. The amendments were provided for in the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) amendments of 1990. These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products

into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On March 6, 2007, USDA issued a determination based on its review, (72 FR 9918), not to conduct a referendum regarding the 1991 amendments to the Order. However, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum. The Act provides for a sign-up period during which eligible cotton producers and importers may request that USDA conduct a referendum on continuation of the 1991 amendments to the Order. Accordingly, USDA will provide all eligible Upland cotton producers and importers an opportunity to request a continuance referendum regarding the 1991 amendments to the Order.

The sign-up period will be provided for all eligible producers and importers. Eligible cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the county FSA office where their farm is located. If the producer's land is in more than one county, the producer shall sign-up at the county office where FSA administratively maintains and processes the producer's farm records. Producers who choose not to visit the county FSA office in person may request a sign-up form in the mail from the same office.

USDA would mail sign-up information, including a written request form, to all known, eligible cotton importers. Importers who favor the conduct of a continuance referendum would return their signed request forms to USDA, FSA, DAFO, Attention: Rick Pinkston, PO Box 23103, Washington, DC 20026–3103.

Importers who do not receive a request form in the mail by September 4, 2007, and who meet the eligibility requirements to participate in the sign-up, may submit a written, signed request for a continuance referendum. Such request must be accompanied by a copy of the U.S. Customs and Border Protection Form 7501 showing payment of a cotton assessment for calendar year 2006. Requests and supporting documentation should be mailed to USDA, FSA, DAFO, Attention: Rick Pinkston, PO Box 23103, Washington, DC 20026–3103.

The sign-up period will be from September 4, 2007, until November 30, 2007. Producer and importer forms shall only be counted if received by USDA during the stated sign-up period.

Section 8(c)2 of the Act provides that if USDA determines, based on the results of the sign-up, that 10 percent or more of the total number of eligible producers and importers that voted in the most recent 1991 referendum (*i.e.*, 4,622) request a continuance referendum on the 1991 amendments, a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton. For example, when counting the requests, the AMS Cotton Program would determine the total number of valid requests from all cotton-producing states and from importers. Not more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent for 4,622 total signatures required to call for a referendum. If USDA determines that 10 percent or more of the number of producers and importers who voted in the most recent referendum favor a continuance referendum. A referendum will be held.

This proposed rule would amend the procedures for the conduct of the current sign-up period. The current rules and regulations provide for sections on definitions, supervision of the sign-up period, eligibility, participation in the sign-up period, counting requests, reporting results and instructions and forms.

In section 1205.18 the term "Producer" is further defined to ensure that all producers that planted cotton during 2006 will be eligible to participate in the sign-up period. In sections 1205.20, 1205.26, and 1205.27 "calendar year 2001" would change to "calendar year 2006." In sections 1205.27, 1205.28, and 1205.29 sign-up period conduct dates, FSA reporting dates, and mailing addresses have been updated.

A 10-day comment period is determined to be appropriate because these proposed eligibility and participation requirements are substantially the same as the eligibility and participation requirements that were used in previous referenda and a sign-up period; participation is voluntary; and this rule, if adopted, should be made effective as soon as possible in order to best reflect applicable time frames in the Act.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.20 is revised to read as follows:

§ 1205.20 Representative period.

The term *representative period* means the 2006 calendar year.

3. In § 1205.26, paragraphs (a)(1) and (a)(2)are revised as follows:

§ 1205.26 Eligibility.

* * * * *

(a) * * *

(1) Any person who was engaged in the production of Upland cotton during calendar year 2006; and

(2) Any person who was an importer of Upland cotton and imported Upland cotton in excess of the value of $2.00 per line item entry during calendar year 2006.

* * * * *

4. Section 1205.27 is revised to read as follows:

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from September 4, 2007, through November 30, 2007. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by November 30, 2007.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and AMS shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, AMS shall mail a request form to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by September

4, 2007, may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment for calendar year 2006. Importers must submit their requests and supporting documents to USDA, FSA, DAFO, Attention: Rick Pinkston, P.O. Box 23103, Washington, DC 20026–3103. All requests and supporting documents must be received by November 30, 2007.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the "County FSA Office Sign-up Sheet." A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA–578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA–578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note "ineligible" in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by October 31, 2007.

7. In § 1205.28, the first sentence is revised to read as follows:

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Field Operations (DAFO), shall begin counting requests no later than November 1, 2007. * * *

8. Section 1205.29 is revised to read as follows:

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by December 7, 2007, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAFO shall prepare, by December 7, 2007, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each State FSA office shall, by December 7, 2007, forward all county reports to DAFO. By December 14, 2007, DAFO shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton Program, AMS, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224.

Dated: July 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14608 Filed 7–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28811; Directorate Identifier 2006–NM–246–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. This proposed AD would require identifying the material used in the elevator hinge support fittings of the horizontal stabilizer trailing edge, doing repetitive detailed inspections for cracking of the fittings and corrective actions if necessary, and doing an eventual terminating action. This proposed AD results from a report that stress corrosion cracking of the elevator hinge support fittings has been discovered on several Model 707 airplanes. We are proposing this AD to prevent cracking of the elevator hinge support fittings, which could reduce the elevator support stiffness and lead to in-flight airframe vibration, consequent damage to the elevator and horizontal stabilizer, and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2007–28811; Directorate Identifier 2006–NM–246–AD" at the

beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that stress corrosion cracking of the elevator hinge support fittings (made of 7079–T6 material) of the horizontal stabilizer trailing edge has been discovered on several Model 707 airplanes. In some cases, multiple fittings on one stabilizer were found to be cracked; excessive cracking at multiple rib locations will reduce the elevator support stiffness. This condition, if not corrected, could lead to in-flight airframe vibration, consequent damage to the elevator and horizontal stabilizer, and reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing 707 Alert Service Bulletin A3518, dated October 9, 2006. The alert service bulletin describes procedures for:

- Repetitively verifying whether or not the elevator hinge support fittings of the horizontal stabilizer trailing edge are made of 7079–T6 or 7075–T6 material;
- Modifying certain rib web segments by fabricating and installing nutplates to create access to the web area for inspection;
- Doing initial and repetitive inspections for cracking of hinge support fittings made of 7079–T6 or 7075–T6 material, and corrective actions if necessary; and
- Eventually replacing all affected hinge support fittings with new, improved fittings made of 7075–T7351 material.

Corrective actions include repairing or replacing any cracked fitting with a new or serviceable fitting made of 7079–T6 or 7075–T6 material, or with a new, improved fitting. Replacing any affected fitting with a new, improved fitting made of 7075–T7351 material eliminates the need for the repetitive inspections for that fitting. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

The alert service bulletin specifies to contact Boeing for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

The alert service bulletin does not specify a number of work hours for modifying the rib web segments. However, we have confirmed with Boeing that this action should take about 6 work hours and have estimated the costs to accomplish this proposed AD accordingly.

The alert service bulletin specifies to repeat the verification of the hinge material at intervals not to exceed 180 days after the date on the alert service bulletin or before further flight after the replacement of any hinge support fitting, whichever occurs first. We have confirmed with Boeing that repetitive verification at intervals not to exceed 180 days is not necessary. Therefore, this proposed AD would only require repeat verification of the hinge material before further flight after the replacement of any hinge support fitting.

Costs of Compliance

There are about 185 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 52 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Material verification	1	No parts needed	$80	$4,160.
Detailed inspections	24, per inspection cycle	No parts needed	$1,920	$47,840, per inspection cycle.
Modification (fabrication and installation of nutplates).	6	Operator supplied	$480	$24,960.
Terminating action	132	$53,078 [1] or $87,750 [2]	$63,638 [1] or $98,310 [2]	Up to $5,112,120.

[1] For Group 1 airplanes.
[2] For Group 2 airplanes.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–28811; Directorate Identifier 2006–NM–246–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that stress corrosion cracking of the elevator hinge support fittings of the horizontal stabilizer trailing edge has been discovered on several Model 707 airplanes. We are issuing this AD to prevent cracking of the elevator hinge support fittings, which could reduce the elevator support stiffness and lead to in-flight airframe vibration, consequent damage to the elevator and horizontal stabilizer, and reduced controllability of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3518, dated October 9, 2006.

Material Identification

(g) Within 180 days after the effective date of this AD or before further flight after any horizontal stabilizer is replaced: Verify the type of material used in the elevator hinge support fittings of the horizontal stabilizer trailing edge, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin, then do the requirements of paragraph (g)(1) or (g)(2) of this AD, as applicable. Repeat the verification before further flight after the replacement of any hinge support fitting.

(1) For any hinge support fitting made of 7075–T7351 material: No further action is required by paragraph (h) or (i) of this AD.

(2) For any hinge support fitting made of 7079–T6 or 7075–T6 material: Do the actions required by paragraph (h) of this AD.

Repetitive Inspections, One-Time Modification, and Corrective Actions

(h) Before further flight after doing paragraph (g) of this AD, do a detailed inspection for cracking of the hinge support fittings and modify certain segments of the rib webs, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. For any hinge support fitting found to be cracked or damaged, before further flight, do the actions of paragraph (h)(1) or (h)(2) of this AD; in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Do all actions in accordance with the Accomplishment Instructions of the service bulletin; except where the service bulletin specifies to contact the manufacturer for repair procedures, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(1) Replace the fitting with a serviceable fitting made of 7079–T6 or 7075–T6 material. Repeat the detailed inspection thereafter at intervals not to exceed 180 days, until the terminating action of paragraph (i) of this AD has been done.

(2) Replace the fitting with a new, improved fitting made of 7075–T7351 material.

Terminating Action

(i) For all airplanes: Within 48 months after the effective date of this AD, replace all hinge support fittings made of 7079–T6 or 7075–T6 material with new, improved fittings made of 7075–T7351 material, in accordance with Part 4 of the Accomplishment Instructions of the service bulletin. Doing this action terminates all requirements of paragraphs (g) and (h) of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install, on any airplane, a new or serviceable hinge support fitting made of 7079–T6 or 7075–T6 material, unless the requirements of paragraph (h)(1) of this AD are accomplished.

Alternative Methods of Compliance (AMOCs)

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

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

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

Issued in Renton, Washington, on July 18, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14638 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28810; Directorate Identifier 2007–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Model Hawker 800XP Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Model Hawker 800XP airplanes. This proposed AD would require doing an inspection of panel DA wiring for clearance and for signs of chafing or exposed conductors, and repairing or replacing the wires and cable ties if necessary. This proposed AD results from reports of wire bundle interference in the DA panel, chafed wire bundles, and exposed conductors. We are proposing this AD to prevent chafing of wire bundles, which could cause an electrical short and consequent loss of several functions essential for safe flight and smoke or fire in the flight compartment and main cabin.

DATES: We must receive comments on this proposed AD by September 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2007–28810; Directorate Identifier 2007–NM–104–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received reports of wire bundle interference in the DA panel, chafed wire bundles, and exposed conductors, on Hawker Beechcraft Model Hawker 800XP airplanes. These wire bundles consist of wiring for various airplane systems (e.g., primary or secondary flight displays, air data systems, communications, navigation, warnings, and numerous other airplane systems). The cause has been attributed to improper wire routing resulting from inadequate detailed assembly and installation instructions during production of the airplanes. Chafing of wire bundles, if not corrected, could cause an electrical short and consequent loss of several functions essential for safe flight and smoke or fire in the flight compartment and main cabin.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 24–3772, dated February 2006. The service information describes procedures for doing a detailed inspection of panel DA wiring for clearance and for signs of chafing or exposed conductors, and repairing or replacing the wires and cable ties with new ones, if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Referenced Service Information."

Difference Between Proposed Rule and Referenced Service Information

Operators should note that, although the Accomplishment Instructions of the referenced service information describe procedures for submitting a sheet recording compliance with the service information, this proposed AD would not require that action.

Costs of Compliance

There are about 438 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 292 airplanes of U.S. registry. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of

the proposed AD for U.S. operators is $46,720, or $160 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Hawker Beechcraft Corporation: Docket No. FAA–2007–28810; Directorate Identifier 2007–NM–104–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Model Hawker 800XP airplanes, certificated in any category; as identified in Raytheon Service Bulletin SB 24–3772, dated February 2006.

Unsafe Condition

(d) This AD results from reports of wire bundle interference in the DA panel, chafed wire bundles, and exposed conductors. We are issuing this AD to prevent chafing of wire bundles, which could cause an electrical short and consequent loss of several functions essential for safe flight and smoke or fire in the flight compartment and main cabin.

Compliance

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

Inspection and Corrective Actions

(f) Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first, do a detailed inspection of panel DA wiring for clearance and for signs of chafing or exposed conductors, in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3772, dated February 2006. If any wire is touching the panel, structure, or equipment, or if evidence of chafing or exposed conductors exists, before further flight, repair or replace the wires and cable ties with new ones, in accordance with the service bulletin.

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

(g) Although Raytheon Service Bulletin SB 24–3772, dated February 2006, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on July 18, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14637 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28435; Directorate Identifier 2007–CE–054–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE GMBH & CO KG Models G102 ASTIR CS, G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

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

As a result of the replacement action of the G 103 TWIN ASTIR spar spigot assemblies, the Gliding Federation of Australia issued a directive to inspect the similar main spigots of single-seater sailplanes.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–28435; Directorate Identifier 2007–CE–054–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, has issued AD 91–5/2 Grob, dated February 1, 1991 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> As a result of the replacement action of the G 103 TWIN ASTIR spar spigot assemblies, the Gliding Federation of Australia issued a directive to inspect the similar main spigots of single-seater sailplanes.

The MCAI requires you to inspect the wing main spigot assembly before the next flight and replace it. You may obtain further information by examining the MCAI in the AD docket.

The MCAI compliance time required the wing main spigot assembly to be inspected before the next flight and replacement of the wing spar spigot assembly no later than December 31, 1992. The FAA did not issue an AD on the single-seat versions (Models G102 ASTIR CS, G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III) at the time the German airworthiness authority issued its AD.

Relevant Service Information

Grob Luft- und Raumfahrt has issued Service Bulletin TM 306–29; TM 320–5, issue date: October 11, 1990. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 75 products of U.S. registry. We also estimate that it would take about 24 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $840 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $207,000, or $2,760 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

GROB–WERKE GMBH & CO KG: Docket No. FAA–2007–28435; Directorate Identifier 2007–CE–054–AD.

Comments Due Date

(a) We must receive comments by August 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the gliders Model G102 ASTIR CS, serial numbers (SNs) 1001 through 1536; Model G102 CLUB ASTIR III, SNs 5501 (suffix C) through 5652 (suffix C); Model G102 CLUB ASTIR IIIb, SNs 5501 (suffix Cb) through 5652 (suffix Cb); and Model G102 STANDARD ASTIR III, SNs 5501 (suffix S) through 5652 (suffix S), that are:

(1) Equipped with any wing spar spigot assembly that has not been replaced following Grob Luft- und Raumfahrt Service Bulletin TM 306–29; TM 320–5, issue date: October 11, 1990; and

(2) Are certificated in any category.

Subject

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

Reason

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

As a result of the replacement action of the G 103 TWIN ASTIR spar spigot assemblies, the Gliding Federation of Australia issued a directive to inspect the similar main spigots of single-seater sailplanes.

The MCAI requires you to inspect the wing main spigot assembly before the next flight and replace it.

Actions and Compliance

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

(1) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, inspect both wing spar spigot assemblies for cracks using a dye penetrant or magnetic particle method following Grob Luft- und Raumfahrt Service Bulletin TM 306–29; TM 320–5, issue date: October 11, 1990. The use of the magnification method is prohibited.

Note 1: If dye penetrant method is used, great care should be exercised when cleaning and/or etching the surfaces and interpreting surface faults.

(2) Replace the wing main spigot assembly following Grob Luft- und Raumfahrt Service Bulletin TM 306–29; TM 320–5, issue date: October 11, 1990, using whichever of the following compliance times that apply:

(i) If cracks are found during the inspection required in paragraph (f)(1) of this AD, before further flight; or

(ii) If no cracks are found during the inspection required in paragraph (f)(1) of this AD, within the next 12 months after the effective date of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI compliance time required the wing main spigot assembly to be inspected before the next flight and replacement of the wing spar spigot assembly no later than December 31, 1992. This proposed AD requires inspection within the next 10 hours TIS after the effective date of this AD and replacement prior to further flight after the inspection where cracks are found or 12 months after the effective date of this AD if no cracks are found.

(2) In lieu of authorizing a 10x magnifier for inspection as specified in the MCAI, this proposed AD requires you use either a dye penetrant or magnetic particle inspection method.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Federal Republic of Germany Luftfahrt-Bundesamt AD 91–5/2 Grob, dated February 1, 1991; and Grob Luft- und Raumfahrt Service Bulletin TM 306–29; TM 320–5, issue date: October 11, 1990; for related information.

Issued in Kansas City, Missouri, on July 24, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14641 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101001–05]

RIN 1545-BE80

Abandonment of Stock and Other Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance concerning the availability and character of a loss deduction under section 165 of the Internal Revenue Code for losses sustained from abandoned securities. These proposed regulations are necessary to clarify the tax treatment of losses from abandoned securities and will affect any taxpayer claiming a deduction for a loss from abandoned securities after the date these regulations are published as final regulations in the **Federal Register**.

DATES: Written or electronic comments and requests for a public hearing must be received by October 29, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–101001–05), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through

Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101001–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, 20224, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS REG–101001–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa S. Dobson at (202) 622–7790, or Sean M. Dwyer at (202) 622–5020; concerning submissions of comments and requests for a hearing, Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document proposes to amend § 1.165–5 of the Income Tax Regulations (26 CFR part 1) to provide guidance concerning the Federal income tax treatment of abandoned securities.

Abandonment of Securities

Section 165(a) of the Code allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise. Section 1.165–1(d)(1) of the Income Tax Regulations provides that a loss is treated as sustained during the taxable year in which the loss occurs, as evidenced by a closed and completed transaction, and as fixed by an identifiable event occurring in such taxable year.

Section 165(g)(1) provides that, if any security that is a capital asset becomes worthless during the taxable year, the resulting loss is treated as a loss from the sale or exchange of a capital asset (that is, as a capital loss) on the last day of the taxable year. Section 165(g)(2) defines *security* as a share of stock in a corporation; a right to subscribe for or to receive a share of stock in a corporation; or a bond, debenture, note or certificate or other evidence of indebtedness issued by a corporation or government with interest coupons or in registered form. Section 165(g)(3) provides an exception from capital loss treatment for certain worthless securities in a domestic corporation affiliated with the taxpayer.

The legislative history of the predecessor of section 165(g) indicates that the provision was enacted to remove the "peculiar and anomalous results" that followed from treating losses from the worthlessness of securities as ordinary losses or deductions, and losses from the sale or exchange of securities as capital losses, because both losses represent a loss of capital in a transaction entered into for profit. See H. Rep. No. 1860, 75th Cong., 3d Sess., at 18–19 (1938).

The Treasury Department and the IRS understand that some taxpayers have taken the position that a loss under section 165(a) resulting from the abandonment of a security is not subject to the loss characterization rules provided in section 165(g).

Property that has become worthless to the taxpayer may give rise to a loss deduction under section 165(a). In general, worthlessness is determined by a combination of subjective and objective indicia including a subjective determination of worthlessness to the taxpayer and objective evidence of a closed and completed transaction. See *Echols* v. *Commissioner*, 950 F.2d 209 (5th Cir. 1991); *Boehm* v. *Commissioner*, 326 U.S. 287 (1945). For purposes of section 165(a), the act of abandonment is an event that establishes both of these elements. Rev. Rul. 2004–58, 2004–1 CB 1043, see § 601.601(d)(2)(ii)(*b*). Although an act of abandonment may be "one of several factors in the analysis of whether the taxpayer's subjective determination of an asset's worthlessness is sustainable, abandonment is not an indispensable requirement for a worthlessness deduction under Code section 165." *Echols*, 950 F.2d at 212. Identifiable events may include "other acts or events which reflect the fact that the property is worthless." *Proesel* v. *Commissioner*, 77 T.C. 992, 1005 (1981).

The proposed regulations provide that, for purposes of applying the loss characterization rules of section 165(g), the abandonment of a security establishes the worthlessness of the security to the taxpayer. Under the proposed regulations a loss established by the abandonment of a security that is a capital asset is treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset, unless the exception in section 165(g)(3) applies. In characterizing losses established by the abandonment of a security in a manner consistent with other worthless security losses, the proposed regulations further the legislative intent to eliminate "peculiar and anomalous results." See H. Rep. No. 1860, 75th Cong., 3d Sess., at 18–19 (1938). See also § 1.332–2(b) and Rev. Rul. 2003–125, 2003–2 CB 1243, see § 601.601(d)(2)(ii)(*b*), (wherein the character of a loss established in a transaction in which a shareholder disposes of stock and receives no consideration (specifically, a liquidation that fails to qualify under section 332) is prescribed by section 165(g)).

Although a taxpayer need not relinquish legal title to property in all cases to establish abandonment, in view of the nature of a taxpayer's rights in stock and other securities these proposed regulations require that to abandon a security, a taxpayer must permanently surrender and relinquish all rights in the security and receive no consideration in exchange for the security.

Abandonment or Cancellation of Other Debt Instruments

Section 166(a)(1) allows as a deduction any debt which becomes worthless within the taxable year. Under section 166(b), the basis for determining the amount of the deduction is the adjusted basis of the debt. Section 166(a)(2) permits a deduction for partially worthless debts. It provides that the Secretary, when satisfied that a debt is recoverable only in part, may allow a deduction for the debt in an amount not in excess of the part charged off within the taxable year. The courts have noted that the tests for worthlessness under section 165 and under section 166 are fundamentally the same. See *United States* v. *S.S. White Dental Mfg. Co.*, 274 U.S. 398, 401 (1927).

A creditor may not voluntarily cancel a debt that has value and claim a deduction under section 166 because the debt is now valueless. See *Jostens, Inc.* v. *Commissioner*, 956 F.2d 175, 176–77 (8th Cir. 1992).

Two categories of worthless debts are excepted from section 166: nonbusiness debts under section 166(d) and debt securities under section 166(e). Under section 166(e), section 166 does not apply to a debt that is evidenced by a security as defined in section 165(g)(2)(C). Accordingly, the tax treatment of debt securities is discussed in the *Abandonment of Securities* section of this preamble.

Section 166(d)(1)(A) provides that in the case of a taxpayer other than a corporation, section 166(a) does not apply to a nonbusiness debt. Instead, under section 166(d)(1)(B), a nonbusiness debt that becomes worthless is considered a loss from the sale or exchange of a capital asset held for not more than one year. A *nonbusiness debt* is defined in section 166(d)(2) as a debt that is not created or acquired in connection with, or the worthlessness of which is not incurred in, the taxpayer's trade or business. The legislative intent behind section 166(d) is in part to provide for parity of tax treatment with worthless securities

under section 165(g) and other investments. See *Putnam* v. *Commissioner*, 352 U.S. 82, 91–92 (1956).

The Treasury Department and the IRS request comments concerning the Federal tax treatment of "abandoned debt" other than debt securities, including nonbusiness debts which, under section 166(d), are deductible when worthless as short-term capital losses, and other debt instruments, the worthlessness of which gives rise to a bad debt deduction under section 166(a).

Proposed Effective Date

These proposed regulations are proposed to apply to an abandonment of securities occurring after the date these regulations are published as final regulations in the **Federal Register**. No inference is intended regarding the treatment for Federal income tax purposes of an abandonment of securities occurring before these regulations are effective.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rule and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Although the proposed regulations provide that for purposes of section 165(g) the term *worthless* includes abandoned securities for which no consideration is received, there may be other contexts under the Code or regulations in which the tax treatment of abandoned securities is unclear or in which abandonment and worthlessness should be treated differently. In addition to comments concerning the tax treatment of non-security debt instruments, comments are requested concerning the existence and appropriate tax treatment of abandoned securities in other contexts.

Drafting Information

The principal authors of these regulations are Lisa S. Dobson of the Office of Associate Chief Counsel (Corporate) and Sean M. Dwyer of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.165–5 is amended as follows:

1. Paragraph (i) is redesignated as paragraph (j).

2. A new paragraph (i) is added.

The addition reads as follows:

§ 1.165–5 Worthless securities.

* * * * *

(i) *Abandonment of securities.* For purposes of section 165 and this section, a security that becomes wholly worthless includes a security described in paragraph (a) of this section that is abandoned and otherwise satisfies the requirements for a deductible loss under section 165. If the abandoned security is a capital asset and is not described in section 165(g)(3) and paragraph (d) of this section (concerning worthless securities of certain affiliated corporations), the resulting loss is treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset. See section 165(g)(1) and paragraph (c) of this section. To abandon a security, a taxpayer must permanently surrender and relinquish all rights in the security and receive no consideration in exchange for the security. For purposes of this section, all the facts and circumstances determine whether the transaction is properly characterized as an abandonment or other type of transaction, such as an actual sale or exchange, contribution to capital, dividend, or gift.

* * * * *

Linda E. Stiff,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–14616 Filed 7–27–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Army restricted area, Kuluk Bay, Adak, Alaska

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

ACTION: Notice of proposed rulemaking and request for comments.

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

DATES: Written comments must be submitted on or before August 29, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0023, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number COE–2007–0023 in the subject line of the message.

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

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0023. All comments received will be included in the public docket without change and may be made available on-line at *http://regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or e-mail. The *regulations.gov* Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps 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, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

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

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

Procedural Requirements

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

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

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

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

List of Subjects in 33 CFR Part 334

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

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334–DANGER ZONE AND RESTRICTED AREA REGULATIONS

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

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

2. Add § 334.1325 to read as follows:

§ 334.1325 United States Army restricted area, Kuluk Bay, Adak, Alaska.

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

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

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

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

Dated: July 25, 2007.

Mark Sudol,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–14651 Filed 7–27–07; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 41

[Docket No.: PTO–P–2007–0006]

RIN 0651–AC12

Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office proposes changes to the rules governing practice before the Board of Patent Appeals and Interferences in ex parte patent appeals. The changes are needed to permit the Board to handle an increasing number of ex parte appeals in a timely manner.

The proposed rules seek to provide examiners and Office reviewers with a clear and complete statement of an appellant's position at the time of filing an appeal brief so as to enhance the likelihood that appealed claims will be allowed without the necessity of further proceeding with the appeal, minimize the pendency of appeals before the Office, minimize the need for lengthy patent term adjustments in cases where claims become allowable as a result of an action by the Board in an appeal, provide uniform treatment of requests for an extension of time filed after an appeal brief is filed, and make the decision-making process more efficient.

DATES: Comments are solicited from interested individuals or entities. Written comments must be received on or before September 28, 2007. No public hearing will be held.

ADDRESSES: Submit comments:

1. By electronic mail to *BPAI.Rules@uspto.gov*.

2. By mail to Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

3. By facsimile to 571–273–0042.

To the extent reasonably possible, the Office will make the comments available at *http://www.uspto.gov/web/offices/dcom/bpai/*. To facilitate this goal, the Office strongly encourages the submission of comments electronically, in either ASCII format or ADOBE® portable document format (pdf). Regardless of which submission mode is used to make a submission, the submitter should write only "Ex parte Appeal Rules" in the subject line to ensure prompt consideration of any comments.

Because the comments will be made available to the public, the comments should not include information that the submitter does not wish to have published. Comments that include confidentiality notices will not be entered into the record.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey or Allen R. MacDonald at 571–272–9797.

SUPPLEMENTARY INFORMATION:

Explanation of Proposed Changes

Existing rules in Part 1 are denominated as "Rule x" in this supplementary information. A reference to Rule 136(a) is a reference to 37 CFR 1.136(a) (2006).

Existing rules in Part 41 are denominated as "Bd.R. x" in this supplementary information. A reference to Bd.R. 41.3 is a reference to 37 CFR 41.3 (2006).

Proposed rules are denominated as "Proposed Bd.R." in this supplementary information.

The Board has jurisdiction to consider and decide ex parte appeals in patent applications (including reissue, design and plant patent applications) and ex parte reexamination proceedings.

The Board is currently experiencing a large increase in the number of ex parte appeals. In FY 2006, the Board received 3,349 ex parte appeals. In FY 2007, the Board expects to receive more than 4,000 ex parte appeals. In FY 2008, the Board expects to receive over 5,000 ex parte appeals. These rules are proposed to change procedures in such a way as to allow the Board to continue to resolve ex parte appeals in a timely manner.

The proposed rules do not propose to change any of the rules relating to inter partes reexamination appeals. Nor do the proposed rules propose to change any of the rules relating to contested cases.

In some instances, the rules propose to adopt practices similar to those of the Court of Appeals for the Federal Circuit. For example, an appendix would be required, page limits would be set, and a table of contents and a table of authorities would be required in briefs.

Discussion of Specific Rules

Definitions

Proposed Bd.R. 41.2 would revise Bd.R. 41.2 to eliminate from the definition of "Board" any reference to a proceeding under Bd.R. 41.3 relating to petitions to the Chief Administrative Patent Judge. The Director has delegated authority to the Chief Administrative Patent Judge to decide petitions under Bd.R. 41.3. See Manual of Patent Examining Procedure, § 1002.02(f) (8th ed., Aug., 2006).

Proposed Bd. R. 41.2 would also revise Bd.R. 41.2 to eliminate a petition under Proposed Bd.R. 41.3 from the definition of contested case. At the present time, there are no petitions authorized in a contested case.

Petitions

Bd.R. 41.3 would be revised to include a delegation of authority from the Director to the Chief Administrative Patent Judge to decide certain petitions authorized by Part 41 as proposed to be revised. The delegation of authority would be in addition to that already set out in Manual of Patent Examining Procedure, § 1002.02(f) (8th ed., Aug., 2006). The petitions would include (1) seeking an extension of time to file certain papers after an appeal brief is filed in an ex parte appeal, and (2) to enlarge the page limit of an appeal brief, reply brief, supplemental reply brief or request for rehearing.

Proposed Bd.R. 41.3(a) would require that a copy of any petition be forwarded to the Chief Administrative Patent Judge, so as to minimize any chance that a petition may be overlooked.

Proposed Bd.R. 41.3(b) would define the scope of petitions which can be filed pursuant to the rules. Under Proposed Bd.R. 41.3(b), a petition could not be filed to seek review of issues committed by statute to a panel. *See, e.g., In re Dickinson*, 299 F.2d 954, 958, 133 USPQ 39, 43 (CCPA 1962).

Timeliness of Petitions

Proposed Bd.R. 41.4(c) would be revised to add the phrase "Except to the extent provided in this part" and to revise paragraph 2 to read: "Filing of a notice of appeal and an appeal brief (see §§ 41.31(c) and 41.37(c))." The revision would restrict Proposed Bd.R. 41.4(c)(2) to the notice of appeal and appeal brief. The Chief Administrative Patent Judge would determine whether extensions are to be granted for the filing of most other papers during the pendency of the appeal.

Definitions

Proposed Bd.R. 41.30 would be revised to add a definition of "record on appeal." The record on appeal would consist of (1) the specification, (2) drawings (if any), (3) U.S. patents cited by the examiner or appellant, (4) published U.S. applications cited by the examiner or appellant, (5) the appeal brief, including all appendices, (6) the examiner's answer, (7) any reply brief, including any supplemental appendix, (8) any supplemental examiner's

answer, (9) any supplemental reply brief, (10) any request for rehearing, (11) any order or decision entered by the Board or the Chief Administrative Patent Judge, and (12) any other document or evidence which was considered by the Board as indicated in any opinion accompanying any order or decision. The definition would advise applicants of what documents the Board would consider in resolving the appeal. The definition would also make it clear to any reviewing court what record was considered by the Board.

Appeal to Board

Proposed Bd.R. 41.31(a) would provide that an appeal is taken from a decision of the examiner to the Board by filing a notice of appeal. The following language would be acceptable under the rule as proposed: "An appeal is taken from the decision of the examiner entered [specify date appealed rejection was entered]." An appeal can be taken when authorized by the statute. 35 U.S.C. 134. The provision of Bd.R. 41.31(b) that a notice of appeal need not be signed has been removed. Accordingly, if promulgated, Proposed Bd.R. 41.31 would no longer provide that a notice of appeal need not be signed. Instead, papers filed in connection with an appeal, including the notice of appeal, would need to be signed.

Proposed Bd.R. 41.31(b) would require that the notice of appeal be accompanied by the fee required by law and would refer to the rule that specifies the required fee.

Proposed Bd.R. 41.31(c) would specify the time within which a notice of appeal would have to be filed in order to be considered timely. The time for filing a notice of appeal appears in Rule 134.

Proposed Bd.R. 41.31(d) would provide that a request for an extension of time to file a notice of appeal in an application is governed by Rule 136(a). Proposed Bd.R. 41.31(d) would also provide that a request for an extension of time to file a notice of appeal in an ex parte reexamination proceeding is governed by Rule 550(c).

Proposed Bd.R. 41.31(e) would define a "non-appealable issue" as an issue that is not subject to an appeal under 35 U.S.C. 134. Non-appealable issues are issues (1) over which the Board does not exercise authority in appeal proceedings and (2) which are handled by a petition. Non-appealable issues include such matters as an examiner's refusal to (1) enter a response to a final rejection, (2) enter evidence presented after a final rejection, (3) enter an appeal brief or a reply brief, or (4) withdraw a restriction requirement. The proposed rules contemplate that some petitions relating to non-appealable issues are to be decided by the Chief Administrative Patent Judge. Some of those non-appealable issues include: (1) A petition to exceed page limit and (2) a petition to extend time for filing a paper in the appeal after the filing of the appeal brief. An applicant or patent owner dissatisfied with a decision of an examiner on a non-appealable issue would be required to seek review by petition before an appeal is considered on the merits. Failure to timely file a petition seeking review of a decision of the examiner related to a non-appealable issue would generally constitute a waiver to have those issues considered. The language "[f]ailure to timely file" would be interpreted to mean not filed within the time set out in the rules. The object of the rule, as proposed, would be to maximize resolution of non-appealable issues before an appeal is considered on the merits. Under current practice, an applicant or a patent owner often does not timely seek to have non-appealable issues resolved thereby necessitating a remand by the Board to the examiner to have a non-appealable issue resolved. The remand adds to the pendency of an application or reexamination proceeding and, in some instances, may unnecessarily enlarge patent term adjustment. The Office would intend to strictly enforce the waiver provisions of Proposed Bd.R. 41.31(e), if promulgated, with the view of making the appeal process administratively efficient. While the Office will retain discretion to excuse a failure to timely settle non-appealable issues, it is expected that exercise of that discretion will be reserved for truly unusual circumstances.

Amendments and Evidence Filed After Appeal and Before Brief

Proposed Bd.R. 41.33(a) would provide that an amendment filed after the date a notice of appeal is filed and before an appeal brief is filed may be admitted as provided in Rule 116.

Proposed Bd.R. 41.33(b) would give the examiner discretion to permit entry of an amendment filed with or after an appeal brief is filed under two circumstances. A first circumstance would be to cancel claims, provided cancellation of claims does not affect the scope of any other pending claim in the proceedings. A second circumstance would be to rewrite dependent claims into independent form.

Proposed Bd.R. 41.33(c) would provide that all other amendments filed after the date of an appeal brief is filed will not be admitted, except as permitted by (1) Proposed Bd.R. 41.39(b)(1) (request to reopen prosecution after new rejection in an examiner's answer), (2) Proposed Bd.R. 41.50(b)(1) (request to reopen prosecution after entry of a supplemental examiner's answer following a remand by the Board), (3) Proposed Bd.R. 41.50(d)(1) (request to reopen prosecution after entry of new rejection by the Board), and (4) Proposed Bd.R. 41.50(e) (amendment after recommendation by the Board).

Proposed Bd.R. 41.33(d) would provide that evidence filed after a notice of appeal is filed and before an appeal brief is filed may be admitted (1) if the examiner determines that the evidence overcomes some or all rejections under appeal and (2) appellant shows good cause why the evidence was not earlier presented. The first step in an analysis of whether evidence may be admitted is a showing of good cause why the evidence was not earlier presented. The Office has found that too often an applicant or a patent owner belatedly presents evidence as an afterthought and that the evidence was, or should have been, readily available. Late presentation of evidence is not consistent with efficient administration of the appeal process. Under the rule, as proposed, the Office would strictly apply the good cause standard. *Cf. Hahn v. Wong*, 892 F.2d 1028, 13 USPQ2d 1313 (Fed. Cir. 1989). For example, a change of attorneys at the appeal stage or an unawareness of the requirement of a rule would not constitute a showing of good cause. If good cause is not shown, the analysis ends and the evidence would not be admitted. In those cases where good cause is shown, a second analysis will be made to determine if the evidence would overcome all rejections. Even where good cause is shown, if the evidence does not overcome all rejections, the evidence would not be admitted. Alternatively, the examiner could determine that the evidence does not overcome all the rejections and on that basis alone could refuse to admit the evidence.

Proposed Bd.R. 41.33(e) would provide that evidence filed after an appeal brief is filed will not be admitted except as permitted by (1) Proposed Bd.R. 41.39(b)(1) (request to reopen prosecution after new rejection in examiner's answer), (2) Proposed Bd.R. 41.50(b)(1) (request to reopen prosecution after entry of a supplemental examiner's answer following a remand by the Board), and (3) Proposed Bd.R. 41.50(d)(1) (request

to reopen prosecution after new rejection entered by the Board).

Jurisdiction Over Appeal

Proposed Bd.R. 41.35(a) would provide that the Board acquires jurisdiction upon entry of a docket notice by the Board. At an appropriate time after proceedings are completed before the examiner, a docket notice would be entered in the application or reexamination proceeding file and sent to the appellant. By delaying the transfer of jurisdiction until the appeal is fully briefed and the position of the appellant is fully presented for consideration by the examiner and the Office reviewers (appeal conferees), the possibility exists that the examiner will find some or all of the appealed claims patentable without the necessity of proceeding with the appeal and invoking the jurisdiction of the Board. For this reason, jurisdiction should transfer to the Board only after (1) the appellant has filed an appeal brief, (2) the examiner has entered an answer, and (3) the appellant has filed a reply brief or the time for filing a reply brief has expired. The current rule (Bd.R. 41.35(a)) provides that the Board acquires jurisdiction upon transmittal of the file, including all briefs and examiner's answers, to the Board. However, under the current practice, an appellant may or may not know the date when a file is transmitted to the Board. Most files are now electronic files (Image File Wrapper or IFW file) as opposed to paper files. Accordingly, a paper file is no longer transmitted to the Board. Under current practice, the Board prepares a docket notice which is (1) entered in the IFW file and (2) sent to appellant. Upon receipt of the docket notice, appellant knows that the Board has acquired jurisdiction over the appeal. Proposed Bd.R. 41.35(a) essentially would codify current practice and establish a precise date, known to all involved, as to when jurisdiction is transferred to the Board.

Proposed Bd.R. 41.35(b) would provide that the jurisdiction of the Board ends when the Board (1) orders a remand, or (2) enters a final decision and judicial review is timely sought, or (3) enters a final decision and the time for seeking judicial review has expired. There are two occasions when a remand is entered. First, a remand is entered when the Board is of the opinion that clarification on a point of fact or law is needed. *See* Proposed Bd.R. 41.50(b). Second, a remand is entered when an appellant elects further prosecution before the examiner following entry of a new rejection by the Board. *See* Proposed Bd.R. 41.50(d)(1). Upon entry of a remand the Board's jurisdiction ends. The Board also loses jurisdiction as a matter of law when an appeal to the Federal Circuit is filed in the USPTO. *See In re Allen*, 115 F.2d 936, 47 USPQ 471 (CCPA 1940) and *In re Graves*, 69 F.3d 1147, 1149, 36 USPQ2d 1697, 1698 (Fed. Cir. 1995). A final decision is a panel decision which disposes of all issues with regard to a party eligible to seek judicial review and does not indicate that further action is needed. *See* Bd.R. 41.2 (definition of "final"). When a party requests rehearing, a decision becomes final when the Board decides the request for rehearing. A decision including a new rejection is an interlocutory, not a final, order. If an appellant elects to ask for rehearing to contest a new rejection, the decision on rehearing is a final decision for the purpose of judicial review.

Bd.R. 41.35(c) would continue current practice and provide that the Director could *sua sponte* order an appeal to be remanded to an examiner before entry of a Board decision. The Director has inherent authority to order a *sua sponte* remand to the examiner. Ordinarily, a rule is not necessary for the Director to exercise inherent authority. However, in this particular instance, it is believed that a statement in the rule of the Director's inherent authority serves an appropriate public notice function.

Appeal Brief

Proposed Bd.R. 41.37 would provide for filing an appeal brief to perfect an appeal and would set out the requirements for appeal briefs. The appeal brief is a highly significant document in an ex parte appeal. Appeal brief experience under current Bd.R. 41.37 has been mixed. Proposed Bd.R. 41.37 seeks (1) to take advantage of provisions of Bd.R. 41.37 which have proved useful, (2) clarify provisions which have been subject to varying interpretations by counsel, and (3) add provisions which are expected to make the decision-making process more focused and efficient.

Proposed Bd.R. 41.37(a) would provide that an appeal brief shall be filed to perfect an appeal. Upon a failure to timely file an appeal brief, proceedings on the appeal process would be considered terminated. The language "without further action on the part of the Office" would provide notice that no action, including entry of a paper by the Office, would be necessary for the appeal to be considered terminated. Proposed Bd.R. 41.37(a) would not preclude the Office from entering a paper notifying an applicant or patent owner that the appeal has been terminated. Any failure of the Office to enter a paper notifying an applicant or patent owner that an appeal stands terminated would not affect the terminated status of the appeal. The language "proceedings are considered terminated" would provide notice that when no appeal brief is filed, the time for filing a continuing application under 35 U.S.C. 120 would be before the time expires for filing an appeal brief.

Proposed Bd.R. 41.37(b) would provide the appeal brief shall be accompanied by the fee required by Bd.R. 41.20(b)(2).

Proposed Bd.R. 41.37(c) would provide that an appellant must file an appeal brief within two months from the filing of the notice of appeal.

Proposed Bd.R. 41.37(d) would provide the time for filing an appeal brief is extendable under the provisions of Rule 136(a) for applications and Rule 550(c) for ex parte reexamination proceedings. Consideration was given to proposing a requirement for a petition to extend the time for filing an appeal brief. However, in view of the pre-appeal conference pilot program (see Official Gazette of July 12, 2005; *http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm),* and in an effort to encourage continued participation in that pilot program, further consideration on whether to require a petition will be deferred pending further experience by the Office in the pre-appeal conference pilot program.

Proposed Bd.R. 41.37(e) would provide that an appeal brief must contain, under appropriate headings and in the order indicated, the following items: (1) Statement of the real party in interest, (2) statement of related cases, (3) jurisdictional statement, (4) table of contents, (5) table of authorities, (6) status of claims, (7) status of amendments, (8) rejections to be reviewed, (9) statement of facts, (10) argument, and (11) an appendix containing (a) claims section, (b) claim support section, (c) drawing analysis section, (d) means or step plus function analysis section, (e) evidence section, and (f) related cases section. The items are otherwise defined in other subsections of Proposed Bd.R. 41.37 and, where applicable, would apply to appeal briefs, reply briefs (Proposed Bd.R. 41.41), and supplemental reply briefs (Proposed Bd.R. 41.44).

Proposed Bd.R. 41.37(f) would require a "statement of real party in interest" which would include an identification of the name of the real party in interest. The principal purpose of an identification of the name of the real party in interest is to permit members of the Board to assess whether recusal is

required or would otherwise be appropriate. Another purpose is to assist employees of the Board to comply with the Ethics in Government Act. Since a real party in interest can change during the pendency of an appeal, there would be a continuing obligation to update the real party in interest during the pendency of the appeal.

Proposed Bd.R. 41.37(g) would require an appeal brief to include a "statement of related cases." The statement of related cases would identify related cases by (1) application number, patent number, appeal number or interference number or (2) court docket number. The statement would encompass all prior or pending appeals, interferences or judicial proceedings known to appellant (or appellant's legal representative or any assignee) that relate to, directly affect, or would be directly affected by or have a bearing on the Board's decision in the appeal. A copy of any final or significant interlocutory decision rendered by the Board or a court in any proceeding identified under this paragraph shall be included in the related cases section of the appendix. A significant interlocutory decision would include (1) a decision on a patentability motion in an interference, or (2) a decision interpreting a claim in an interference or by a court. Appellant would be under a continuing obligation to update this item during the pendency of the appeal.

Proposed Bd.R. 41.37(h) would require an appeal brief to contain a "jurisdictional statement" which would set out why appellant believes that the Board has jurisdiction to consider the appeal. The jurisdictional statement would include a statement of (1) the statute under which the appeal is taken, (2) the date of the decision from which the appeal is taken, (3) the date the notice of appeal was filed, and (4) the date the appeal brief is being filed. If a notice of appeal or an appeal brief is filed after the time specified in the rules, appellant would have to indicate (1) the date an extension of time was requested and (2) the date the request was granted. A jurisdictional statement would minimize the chance that the Board would consider an appeal when the application on appeal is abandoned or a reexamination proceeding on appeal has terminated. An example of a jurisdictional statement in an application under a heading styled "Jurisdictional statement" would be: "The Board has jurisdiction under 35 U.S.C. 134(a). The Examiner entered a final rejection on August 1, 2006, setting a three-month period for response. The time for responding to the final rejection expired on November 1, 2006. Rule 134. A notice of appeal and a request for a one-month extension of time under Rule 136(a) was filed on November 15, 2006. The time for filing an appeal brief is two months after the filing of a notice of appeal. Bd.R. 41.37(c). The time for filing an appeal brief expired on January 16, 2007 (Monday, January 15, 2007, being a Federal holiday). The appeal brief is being filed on January 16, 2007." If during the preparation of a jurisdictional statement, an appellant becomes aware that its application is abandoned, appellant could then take steps to revive the application, if revival is appropriate. See Rule 137.

Proposed Bd.R. 41.37(i) would require an appeal brief to contain a "table of contents" identifying the items listed in Proposed Bd.R. 41.37(e) along with a page reference where each item begins. In the case of a reply brief, the table of contents would identify the items required by the reply brief rule (Proposed Bd.R. 41.41(d)). In the case of a supplemental reply brief, the table of contents would identify the items required by the supplemental reply brief rule (Proposed Bd.R. 41.44(d)).

Proposed Bd.R. 41.37(j) would require an appeal brief to contain a "table of authorities." This item would list (1) court and administrative decisions (alphabetically arranged), (2) statutes, and (3) other authorities, along with a reference to the pages of the appeal brief where each authority is cited. A similar requirement applies to a reply brief and a supplemental reply brief.

Proposed Bd.R. 41.37(k) would require an appeal brief to include a "status of pending claims" (e.g., rejected—appealed, rejected—not appealed, cancelled, allowable, withdrawn from consideration, or objected to). An example of a status of pending claims might read as follows under a heading styled "Status of pending claims:" "Claims 1–7 are pending in the application on appeal: Claim 1 (rejected—not appealed), Claims 2–3 (rejected—appealed), Claim 4 (restricted and withdrawn from consideration), Claim 5 (objected to as depending from rejected claim), and Claims 6–7 (allowable)."

Proposed Bd.R. 41.37(l) would require an appeal brief to indicate the "status of amendments" for all amendments filed after final rejection (e.g., entered or not entered). Examples of a status of amendments might read as follows under a heading styled "Status of amendments": (1) "No amendment was filed after final rejection." (2) "An amendment filed October 31, 2006, was *not* entered by the examiner." (3) "An amendment filed November 1, 2006, was entered by the examiner." (4) "An amendment filed October 31, 2006, was *not* entered by the examiner, but an amendment filed November 1, 2006, was entered by the examiner."

Proposed Bd.R. 41.37(m) would require an appeal brief to set out the "rejections to be reviewed," including the claims subject to each rejection. Examples might read as follows under a heading styled "Rejections to be reviewed": (1) "Rejection of claim 2 as being anticipated under 35 U.S.C. 102(b) over Johnson." (2) "Rejection of claims 2–3 as being unpatentable under 35 U.S.C. 103(a) over Johnson and Young." (3) "Rejection of claim 2 as failing to comply with the written description requirement of the first paragraph of 35 U.S.C. 112." (4) "Rejection of claim 2 as failing to comply with the enablement requirement of the first paragraph of 35 U.S.C. 112." (5) "Rejection of claim 3 under 35 U.S.C. 251 based on recapture."

Proposed Bd.R. 41.37(n) would require a "statement of facts." Appellant would set out in an objective and non-argumentative manner the material facts relevant to the rejections on appeal, preferably in numbered paragraphs. A clear, concise and complete statement of relevant facts will clarify the position of an appellant on dispositive issues and assist the examiner in reconsidering the patentability of the rejected claims. A fact would be required to be supported by a reference to the page number of the record on appeal. Where appropriate, the citation should also be to a specific line and to a drawing figure and element number of the record on appeal (see Proposed Bd.R. 41.37(t)). Statements of facts should be set out in short declarative sentences, and each sentence should address a single fact. For example, "In rejecting claims 1–5, the examiner cites Jones (App. [App. meaning appendix], page 8, lines x–y)." "Jones describes a widget (App., page 19, col. 8, lines 3–4 and App., page 16, Figure 1, elements 12 and 13)." A compound statement of fact is not proper, e.g., "Jones describes a widget (App., page 19, col. 8, lines 3–4) and Smith does not describe a device." A statement of facts would have to be non-argumentative, meaning that an appellant would not be able to argue its appeal in the statement of facts. Rather, the statement of facts is designed to require an appellant to set out the facts which the appellant considers material for resolution of the appeal, thereby assisting the examiner initially and, if necessary, the Board thereafter to focus on the dispositive portions of the record. For example, in the case of a rejection for obviousness under § 103, the facts should address at least the

scope and content of the prior art, any differences between the claim on appeal and the prior art, and the level of skill in the art. In the past, some appellants have provided minimal factual development in an appeal brief, apparently believing that the Board will scour the record to divine the facts. It should be remembered that when the appeal reaches the Board, the panel members do not know anything about the appellant's invention or the prosecution history of the application on appeal. Likewise, too often an appellant will not support a statement of fact in an appeal brief by an explicit reference to the evidence. A statement of fact based on the specification would be proper if supported by a reference to page and line (and where appropriate also to drawing figure and element number). A statement of fact based on a patent would be proper if it is supported by a reference to a column and line (and where appropriate also to a drawing figure and element number). A statement of fact based on an affidavit would be proper if supported by a reference to a page and line number or to a page and paragraph number of the affidavit; the affidavit would appear in the evidence section of the appendix. The Office is proposing requiring a reference to a specific citation because an appellant should not expect the examiner or the Board to search the record to determine whether a statement of fact is supported by the evidence. Proposed Bd.R. 41.37(n), as well as other proposed rules, is consistent with the approaches taken by federal courts concerning appeal brief practice and other briefing practice: (1) *Clintec Nutrition Co.* v. *Baxa Corp.*, 988 F. Supp. 1109, 1114, n.16, 44 USPQ2d 1719, 1723, n.16 (N.D. Ill. 1997) (where a party points the court to a multi-page exhibit without citing a specific portion or page, the court will not pour over the documents to extract the relevant information); (2) *Ernst Haas Studio, Inc.* v. *Palm Press, Inc.*, 164 F.3d 110, 112, 49 USPQ2d 1377, 1379 (2d Cir. 1999) ("Appellant's Brief is at best an invitation to the court to scour the record, research any legal theory that comes to mind, and serve generally as an advocate for appellant. We decline the invitation."); (3) *Winner International Royalty Corp.* v. *Wang*, 202 F.3d 1340, 1351, 53 USPQ2d 1580, 1589 (Fed. Cir. 2000) ("[W]e will not search the record on the chance of discovering * * * whether the district court abused its discretion."); (4) *Gorence* v. *Eagle Food Centers, Inc.*, 242 F.3d 759, 762–63 (7th Cir. 2001) ("Little has been done * * * to make slogging through the record here either more efficient or more pleasant. And it is simply not true, we want to emphasize, that if a litigant presents an overload of irrelevant or non-probative facts, somehow the irrelevancies will add up to relevant evidence * * *"); and (5) *DeSilva* v. *DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999) ("[An appeal] brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record." *See also* (1) *Shiokawa* v. *Maienfisch*, 56 USPQ2d 1970, 1975 (Bd. Pat. App. & Int. 2000) and (2) *LeVeen* v. *Edwards*, 57 USPQ2d 1406, 1413 (Bd. Pat. App. & Int. 2000).

Proposed Bd.R. 41.37(o) would require an appeal brief to contain an argument comprising an analysis explaining, as to each rejection to be reviewed, why the appellant believes the examiner erred as to each rejection to be reviewed. The analysis would have to address all points made by the examiner with which the appellant disagrees. The presentation of a concise, but comprehensive, argument in response to the final rejection will efficiently frame any dispute between the appellant and the examiner not only for the benefit of the Board but also for consideration by the examiner and Office reviewers (appeal conferees) and provide the best opportunity for resolution of the dispute without the necessity of proceeding with the appeal. Where an argument has previously been presented to the examiner, the analysis would have to identify where any argument being made to the Board was made in the first instance to the examiner. Where an argument has not previously been made to the examiner, an appellant would be required to say so in the appeal brief so that the examiner would know that the argument is new. An example where an argument might not previously have been made to an examiner might occur under the following fact scenario. A first office action rejects claims over Reference A. Applicant amends the claims to avoid Reference A. The examiner enters a final rejection now relying on References A and B. Applicant elects to appeal without filing a response under Rule 116. While applicants are encouraged to file a response under Rule 116 to possibly avoid an appeal all together, at the present time there is no requirement for an applicant to file a Rule 116 response. Whether such a requirement should be made in the future will be held in abeyance pending experience under the rules as proposed, should they ultimately be promulgated. The Board has found that many arguments made in an appeal brief were never earlier presented to the examiner even though they could have been presented (without filing a Rule 116 response). To promote clarity, Proposed Bd.R. 41.37(o) would also require that each rejection for which review is sought shall be separately argued under a separate heading. Also, Proposed Bd.R. 41.37(o) would provide that any finding made or conclusion reached by the examiner that is not challenged would be presumed to be correct. Proposed Bd.R. 41.37(o) would also refer to paragraphs (4) through (8) of the rule where additional requirements for making arguments in response to statutory rejections would be found.

Proposed Bd.R. 41.37(o)(1) would provide that when a rejection applies to two or more claims, the appellant could elect to (1) have all claims stand or fall together or (2) argue the separate patentability of individual claims. The choice would be up to the appellant. However, if the appeal brief fails to make an explicit or clear election, the Board would (1) treat all claims subject to the rejection as standing or falling together and (2) select a single claim to decide the appeal as to that rejection. Any doubt as to whether an election has been made would be resolved against the appellant. For each claim argued separately, a subheading identifying the claim by number would be required. The requirement for a separate subheading in the appeal brief is to minimize any chance the examiner or the Board would overlook an argument directed to the separate patentability of a particular claim. In the past, appellants have been confused about whether a statement of what a claim covers is sufficient to constitute an argument that the claim is separately patentable. It is not. A statement that a claim contains a limitation not present in another claim would not in and of itself be sufficient to satisfy the requirement of Proposed Bd.R. 41.37(o)(1) that a separate argument be made. Unless an appellant plans to argue the separate patentability of a claim, the appellant would not discuss or refer to the claim in the argument section of the appeal brief. A copy of the claims will be before the Board in the "claims section" (Proposed Bd.R. 41.37(p)). In an application containing claims 1–3 where the examiner has made (1) a Section 102 rejection or (2) a Section 103 rejection or (3) both a Section 102 and 103 rejection, examples of a proper statement of "claims standing or falling together" would be as follows: (1) "With respect to the rejection under Section 102, claims 1–

3 stand or fall together." (2) "With respect to the rejection under Section 103, claims 1–2 stand or fall together; claim 3 is believed to be separately patentable." (3) "With respect to the rejection under Section 102, claims 1–2 stand or fall together; claim 3 is believed to be separately patentable. With respect to the rejection under Section 103, the claims stand or fall together."

Proposed Bd.R. 41.37(o)(2) would provide that the Board would only consider arguments that (1) are presented in the argument section of the appeal brief and (2) address claims set out in the claim support section of the appendix. Appellant would waive all arguments which could have been, but were not, addressed in the argument section of the appeal brief. A first example would be where Argument 1 and Argument 2 are presented in response to a final rejection, but only Argument 1 is presented in the appeal brief. Only Argument 1 would be considered. Argument 2 would be waived. A second example would be where an applicant presents an affidavit under Rule 131 or Rule 132 to the examiner, but does not argue the relevance of the affidavit in the appeal brief. The Board would not consider the affidavit in deciding the appeal.

Proposed Bd.R. 41.37(o)(3) would require that, when responding to points made in the final rejection, the appeal brief shall specifically (1) identify each point made by the examiner and (2) indicate where appellant previously responded to each point that appellant has not previously responded to the point. In supporting any argument, the appellant shall refer to a page and, where appropriate a line, in the evidence section of the appendix, specification, drawings (if any), U.S. patents, and published U.S. applications. Examples of argument formats that would be acceptable under Proposed Bd.R. 41.37(o)(3) follow.

Example 1. In the case where an argument had been previously presented to the examiner, the following format would be acceptable under Proposed Bd.R. 41.37(o)(3). "The examiner states that Reference A teaches element B. Final Rejection, App., page x, lines y–z. In response, appellant previously pointed out to the examiner why the examiner is believed to have erred. App., pages 8–9. The response is [concisely state the response]." A similar format has been successfully used for some years in oppositions and replies filed in interference cases.

Example 2. Alternatively, in the case where an argument has not been previously made to the examiner, the following format would be acceptable under Proposed Bd.R. 41.37(o)(3). "In response to the examiner's reliance on Reference C for the first time in the final rejection (App., page 4), appellant's response includes a new argument which has not been previously presented to the examiner. The response is [concisely state the response]." Use of this format will minimize any chance that the examiner will overlook an argument when preparing the examiner's answer.

The recommended argument formats are intended to be efficient protocols for assisting the Board in focusing on any differences between the examiner's and appellant's positions.

Paragraphs (4) through (8) of Proposed Bd.R. 41.37(o) would reinstitute specific requirements not found in Bd.R. 41.37, but that appeared in the prior rule (37 CFR 1.192(c)(8)(i) through (v)) (2004). Since promulgation of Bd.R. 41.37, suggestions from outside the Office have been made to have the Office reinsert the requirements of former Rule 192(c)(8)(i) through (v) into the rules. These paragraphs would require that appellants expressly address the statutory requirements for patentability. Paragraphs (4) through (7), as under the Office's prior rules, would address rejections under 35 U.S.C. 102, 103 and 112 (first and second paragraphs). There are, of course, other rejections which are based on other sections of the Patent Law, e.g., 35 U.S.C. 101 (non-statutory subject matter, same invention double patenting, and lack of utility), 35 U.S.C. 251 (recapture and presenting claims in reissue applications that are broader than original patent claims), and 35 U.S.C. 305 (presenting claims in re-examination proceedings that are broader than original patent claims). Likewise, there are non-statutory rejections, such as obvious double patenting and interference estoppel. Since the vast majority of the rejections are based on sections 102, 103 and 112, it is proposed to have requirements in the rules related only to those rejections. Setting out requirements for other rejections is presently viewed as counterproductive and complicated since it would be impossible to address all the various possibilities for those other rejections. Accordingly, a "catch-all" for other rejections is set out in Proposed Bd.R. 41.37(o)(8).

Proposed Bd.R. 41.37(o)(4) would require, for each rejection under 35 U.S.C. 112, first paragraph, that the argument shall also specify the errors in the rejection and how the rejected claims comply with the first paragraph of 35 U.S.C. 112, including, as appropriate, how the specification and drawings, if any, (1) describe the subject matter defined by the rejected claims, (2) enable any person skilled in the art to which the invention pertains to make and use the subject matter of the rejected claims, or (3) set forth the best mode contemplated by the inventor of carrying out the claimed invention.

Proposed Bd.R. 41.37(o)(5) would require, for each rejection under 35 U.S.C. 112, second paragraph, that the argument shall also specify how the rejected claims particularly point out and distinctly claim the subject matter which appellant regards as the invention.

Proposed Bd.R. 41.37(o)(6) would require, for each rejection under 35 U.S.C. 102 (anticipation), that the argument shall also identify any specific limitations in the rejected claims which are not described (explicitly or inherently) in the prior art relied upon in support of the rejection and, therefore, why the rejected claims are patentable under 35 U.S.C. 102.

Proposed Bd.R. 41.37(o)(7) would require, for each rejection under 35 U.S.C. 103, that the argument shall (1) specify the errors in the rejection, (2) if appropriate, specify the specific limitations in the rejected claims that are not described in the prior art relied upon in support of the rejection, and (3) explain how those limitations render the claimed subject matter unobvious over the prior art. A general argument that all limitations are not described in a single prior art reference would not satisfy the requirements of this paragraph.

Proposed Bd.R. 41.37(o)(8) would require for any rejection other than those mentioned in Proposed Bd.R. 41.37(o)(4) through (7) that the argument shall specify the errors in the rejection, including where appropriate the specific limitations in the rejected claims upon which the appellant relies to establish error.

Proposed Bd.R. 41.37(p) would require an appeal brief to contain a "claims section" in the appendix which would consist of an accurate clean copy in numerical order of all claims pending in the application or reexamination proceeding on appeal. The claims section of the appendix would include all pending claims, not just those under rejection. The status of each claim would have to be indicated.

Proposed Bd.R. 41.37(q) would require an appeal brief to contain a "claim support section" of the appendix. The claim support section would replace Bd.R. 41.37(c)(1)(v) which requires a concise explanation of the subject matter defined in each of the independent claims on appeal. The claim support section, for each claim argued separately (see Proposed Bd.R. 41.37(o)(1)), would consist of an annotated copy of the claim indicating

in bold face between braces ({}) after each limitation where, by page and line numbers, the limitation is described in the specification as filed. Braces ({}) are used instead of brackets [ ] because brackets are used in reissue claim practice. Unlike the "claims section" (see Proposed Bd.R. 41.37(p)), only those claims being argued separately would need to appear in the "claim support section." A significant objective of the "claim support section" would be to provide the examiner and the Board with appellant's perspective on where language of the claims (including specific words used in the claims, but not in the specification) finds support in the specification. Finding support for language in the claims can help the examiner and the Board construe claimed terminology and limitations when applying the prior art. The claim support section of the appendix would help the Board to interpret the scope of claims, or the meaning of words in a claim, before applying the prior art. Practice under current Bd.R. 41.37(c)(1)(v) has not been efficient because of the diverse manners in which different appellants have attempted to comply with the current practice. One significant problem faced by the Board under the current practice occurs when the language of a claim does not have direct antecedent language in the specification. In order for the Board to understand the scope of a claim or the meaning of a term in the claim, the Board primarily relies on the specification. Moreover, in practice before the Office, a claim is given its broadest reasonable construction consistent with the specification. However, when the language of the claim does not find correspondence in the specification, as filed, often it is difficult to determine the meaning of a particular word in a claim or to give the claim its broadest reasonable interpretation. The claim support section of the appendix would give the examiner and the Board the appellant's view on where the claim is supported by the application, as filed. The proposed requirement, if promulgated, would significantly improve the efficiency of the Board's handling of appeals.

Proposed Bd.R. 41.37(r) would require an appeal brief to contain a "drawing analysis section" in the appendix. For each claim argued separately (see Proposed Bd.R. (o)(1)), the drawing analysis section would consist of an annotated copy of the claim in numerical sequence, indicating in bold face between braces ({}) after each limitation where, by reference or sequence residue number, each limitation is shown in the drawing or sequence. A drawing analysis has been required in interference cases since 1998 and has proven useful to the Board in understanding claimed inventions described in applications and patents involved in an interference. The drawing analysis section is expected to be equally useful in ex parte appeals. If there is no drawing or amino acid or nucleotide material sequence, the drawing analysis section would state that there is no drawing or sequence. The purpose of requiring a statement is to be certain that a drawing analysis has not been overlooked.

Proposed Bd.R. 41.37(s) would require an appeal brief to contain a "means or step plus function analysis section" in the appendix. The means or step plus function analysis section would replace the requirement of current Bd.R. 41.37(c)(1)(v) relating to identification of structure, material or acts for means or step plus function claims limitations contained in appealed claims. Under Proposed Bd.R. 41.37(s), the means or step plus function analysis section would include each claim argued separately (see Proposed Bd.R. 41.37(o)(1)) that contains a limitation that appellant regards as a means or step plus function limitation in the form permitted by the sixth paragraph of 35 U.S.C. 112. Further, for each such claim, a copy of the claim would be reproduced indicating in bold face between braces ({}) the specific portions of the specification and drawing that describe the structure material or acts corresponding to each claimed function. If the appealed claims do not contain any means or step plus function limitations, the section would state that there is no means or step plus function limitation in any claim on appeal. The Office is proposing to require a particular format for the means or step plus function analysis section to avoid the confusion that arises from the variety of ways appellants employ under current practice in attempting to comply with the requirements of Bd.R. 41.37(c)(1)(v). A means or step plus function analysis essentially tracking Proposed Bd.R. 41.37(s) has been used in interference cases since 1998 and has been helpful in determining the scope of claims involved.

Proposed Bd.R. 41.37(t) would require an appeal brief to contain an "evidence section" in the appendix. The evidence section continues, in part, the practice under Bd.R. 41.37(c)(1)(ix). The evidence section and any supplemental appendix filed pursuant to Proposed Bd.R. 41.41(h), as well as the specification, any drawings, and any cited U.S. patents and published U.S. applications, would constitute the record upon which the appeal would be decided. The word "evidence" would be construed broadly and would include amendments, affidavits or declaration, non-patent literature, foreign patents and publications, published PCT documents, and any other material admitted into the record by the examiner. The evidence section would include (1) table of contents, (2) the Office action setting out the rejection on appeal (including any Office action that may be incorporated by reference), (3) all evidence (except the specification, any drawings, U.S. patents and published U.S. applications) upon which the examiner relied in support of the rejection on appeal, (4) the relevant portion of papers filed by the appellant during prosecution before the examiner which show that an argument being made on appeal was made in the first instance to the examiner, (5) affidavits or declarations upon which the appellant relied before the examiner, and (6) other evidence upon which the appellants relied before the examiner. If the examiner believes that other material should be included in the evidence section, the examiner would be able to attach that evidence to the examiner's answer. Pursuant to Proposed Bd.R. 41.37(v)(1), all pages of an appeal brief or a reply brief (including appendices to those briefs) would be consecutively numbered beginning with page 1. Appeal briefs, examiner's answers, reply briefs, supplemental examiner's answers, supplemental reply briefs, and opinions of the Board would be able to cite the "record" by reference to a page of the evidence section or any supplemental appendix. If the appellant, the examiner, and the Board all cite to a well-defined record, confusion over what a reference to a piece of evidence means should be diminished.

Proposed Bd.R. 41.37(u) would require an appeal brief to contain a "related cases section" in the appendix. The related cases section would consist of copies of orders and opinions required to be cited pursuant to Proposed Bd.R. 41.37(g).

Proposed Bd.R. 41.37(v) would require an appeal brief to be presented in a particular format. The appeal brief would have to comply with the format of Rule 52 as well as with other requirements set out in Proposed Bd.R. 41.37(v)(1) through (6).

Proposed Bd.R. 41.37(v)(1) would require that the pages of an appeal brief, including all appendices, would be consecutively numbered using Arabic numerals beginning with the first page

of the appeal brief, which would be numbered page 1. This practice would prevent (1) re-starting numbering with each section of the appendix or (2) using Roman numeral page numbers, e.g., I, II, V, etc., or page numbers with letters, e.g., "a", "b", "c", "i", "ii", etc. The lines on each page of the appeal brief, and where practical, the appendices, would be consecutively line numbered beginning with line 1 at the top of each page. Line numbering has been used for some time in interference cases and has been found to be useful when making reference in oppositions, replies, and opinions of the Board.

Proposed Bd.R. 41.37(v)(2) would require that text in an appeal brief would be double spaced except in headings, tables of contents, tables of authorities, signature blocks and certificates of service. Block quotations would be indented. Footnotes, which are discouraged, would have to be double spaced.

Proposed Bd.R. 41.37(v)(3) would require that margins shall be at least one inch (2.5 centimeters) on all sides. Line numbering could appear within the left margin.

Proposed Bd.R. 41.37(v)(4) would require that the font would be readable and clean and equivalent to 14 point Times New Roman, including the font for block quotations and footnotes.

Proposed Bd.R. 41.37(v)(5) would provide that an appeal brief may not exceed 25 pages, excluding any (1) statement of the real party in interest, (2) statement of related cases, (3) table of contents, (4) table of authorities, (5) signature block and (6) appendix. To give meaning to the 25-page limitation, an appeal brief would not be permitted to incorporate by reference arguments from other papers in the evidence appendices or from any other source. The prohibition against incorporation by reference is necessary to prevent an appellant from adding to the length of an appeal brief. *Cf. DeSilva* v. *DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999) ("[A]doption by reference amounts to a self-help increase in the length of the appellate brief. * * * [I]ncorporation by reference is a pointless imposition on the court's time. A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record.") (citation omitted). A prohibition against incorporation by reference has been the practice in interference cases since 1998 and has minimized the chance that an argument is overlooked.

Proposed Bd.R. 41.37(v)(6) would require a signature block which would identify the appellant or appellant's representative, as appropriate, and a mailing address, telephone number, fax number and e-mail address.

Examiner's Answer

Proposed Bd.R. 41.39(a) would provide that within such time and manner as may be directed by the Director and if the examiner determines that the appeal should go forward, the examiner shall enter an examiner's answer responding to the appeal brief. The specific requirements of what would be required in an examiner's answer would appear in the Manual of Patent Examining Procedure.

Proposed Bd.R. 41.39(b) would provide that an examiner's answer may include a new rejection. In the past, the rules and the MPEP have used the phrase "new ground of rejection." The phrase "new rejection" implies that the ground, or basis, for the rejection is new. Accordingly, in Proposed Bd.R. 41.39(b) and elsewhere in the proposed rules, the phrase "new rejection" rather than "new ground of rejection" is used. If an examiner's answer contains a rejection designated as a new rejection, appellant, within two months from the date of the examiner's answer, would be required to exercise one of two options or the application will be deemed to be abandoned or the reexamination proceeding will be deemed to be terminated.

Proposed Bd.R. 41.39(b)(1) would provide that the first option would be to request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of evidence. Any amendment or evidence would have to be relevant to the new rejection. A request that complies with this paragraph would be entered and the application or patent under reexamination would be reconsidered by the examiner under the provisions of § 1.112 of this title. A request under this paragraph would be treated as a request to withdraw the appeal.

Proposed Bd.R. 41.39(b)(2) would provide that the second option would be to request that the appeal be maintained by filing a reply brief as set forth in Proposed Bd.R. 41.41. A reply brief could not be accompanied by any amendment or evidence, except an amendment canceling one or more claims which are subject to the new rejection. A reply brief which is accompanied by evidence or any other amendment would be treated as a request to reopen prosecution pursuant to Proposed Bd.R. 41.39(b)(1).

Proposed Bd.R. 41.39(c) would provide that the time for filing a request under Proposed Bd.R. 41.39(b)(1) would be extendable under the provisions of Rule 136(a) as to applications and under the provisions of Rule 550(c) as to reexamination proceedings. However, a request for an extension of time for filing a request under Proposed Bd.R. 41.39(b)(2) would have to be presented as a petition under Proposed Bd.R. 41.3(a) and (c). A decision on the petition would be made by the Chief Administrative Patent Judge or an employee to whom the Chief Administrative Patent Judge has delegated authority to make the decision. The decision would be governed by Rule 41.4(a). The reason for the requirement for a petition is to minimize the time an appeal is pending. In the past, appellants have taken advantage of the provisions of Rule 136(a) to file a reply to maintain the appeal. The length of possible patent term adjustment (35 U.S.C. 154(b)(2)(iii)) is based on the time an appeal is pending. The provisions of Rule 136(a) are not consistent with efficient handling of appeals after the time an appeal brief is filed. The Office does not believe that an applicant should be able to add to any patent term adjustment by the automatic extensions of time that are available through Rule 136(a). Appellants should expect strict application of the "good cause" standard of Bd.R. Rule 41.4(a).

Reply Brief

Proposed Bd.R. 41.41(a) would provide that an appellant may file a single reply brief responding to the examiner's answer.

Proposed Bd.R. 41.41(b) would provide that the time for filing a reply brief would be within two months of the date the examiner's answer is entered.

Proposed Bd.R. 41.41(c) would provide that a request for an extension of time shall be presented as a petition under § 41.3(a) and (c) of this part. A decision on the petition shall be governed by § 41.4(a) of this part. The provisions of Rule 136(a) would no longer apply to extensions of time to file a reply brief.

Proposed Bd.R. 41.41(d) would provide that a reply brief shall be limited to responding to points made in the examiner's answer. Except as otherwise set out in these proposed rules, the form and content of a reply brief would be governed by the requirements for an appeal brief as set out in Proposed Bd.R. 41.37. A reply brief would not be able to exceed fifteen pages, excluding any (1) table of contents, (2) table of authorities, (3) statement of timeliness, (4) signature block and (5) supplemental appendix. A reply brief would be required to contain,

under appropriate headings and in the order indicated, the following items: (1) Table of contents, (2) table of authorities, (3) statement of timeliness, (4) statement of facts in response to any new rejection in examiner's answer, (5) argument, and; where appropriate, (6) supplemental appendix. If the examiner's answer contains a new rejection, designated as such, the page limit would be twenty-five pages and not fifteen pages.

Proposed Bd.R. 41.41(e) would require a reply brief to contain a statement of timeliness. The statement of timeliness would have to establish that the reply brief is being timely filed by including a statement of the date the examiner's answer was entered and the date the reply brief is being filed. If the reply brief is filed after the time specified in this subpart, appellant must indicate the date an extension of time was requested and the date the request was granted. An example of a statement of timeliness would be: "The examiner's answer was entered on October 14, 2006. The time for filing a reply brief expired on December 14, 2006. Bd.R. 41.41(b). A request for extension of time to file the reply brief on December 21, 2006, was filed on December 1, 2006, and was granted by the Chief Administrative Patent Judge on December 10, 2006. The reply brief is being timely filed on December 21, 2006." A reply brief which is not timely filed would not be considered by the examiner or the Board.

Proposed Bd.R. 41.41(f) would require a statement of additional facts, but only when the appellant has elected to file a reply brief in response to a new rejection in an examiner's answer entered pursuant to Proposed Bd.R. 41.39(b)(2). When a statement of additional facts is required, it would have to meet the requirements of Proposed Bd.R. 41.37(n), but would have to be limited to facts relevant to the new rejection. If there is no new rejection in the examiner's answer, there would be no statement of additional facts.

Proposed Bd.R. 41.41(g) would require that an argument appear in the reply brief, which would be limited to responding to points made in the examiner's answer. No general restatement of the case would be permitted in a reply brief. An argument which could have been, but which was not, made in the appeal brief cannot be made in a reply brief. The Office has found a restatement of the case in a reply brief to be a serious distraction. Adding details or additional arguments, if not responsive to points made by the examiner, does not contribute to the efficient handling of appeals. As a result of appellants adding new details and arguments, an examiner often has to enter a supplemental examiner's answer to respond to details and arguments not previously considered by the examiner and that should have been presented in the appeal brief. An example of an acceptable format for presenting an argument in a reply brief (where there was no new rejection in the examiner's answer) might read as follows: First paragraph: "This is a reply to the examiner's answer entered [insert the date the answer was entered]." Last paragraph: "For the reasons given in this reply brief and in the appeal brief, reversal of the examiner's rejection is requested." All paragraphs between the first and last paragraphs would read: "On page x, lines y-z of the examiner's answer, the examiner states that [state what the examiner states]. The response is [concisely state the response]." As part of each response, the appellant would have to refer to the page number and line or drawing element number of the evidence section. Any response which is not concise probably would not comply with Proposed Bd.R. 41.41(g). Frequently, new details and arguments surface in reply briefs. By Proposed Bd.R. 41.41(g), the Office seeks to confine reply briefs to what they ought to be—a response to points raised in the examiner's answer. If Proposed Bd.R. 41.41 is promulgated and, notwithstanding what the rule seeks to achieve, it turns out that too many resources of the Office are needed to enforce the reply brief rule and considerable time is wasted in resolving improper reply brief issues. Consideration could be given to further limiting the nature of replies filed in ex parte appeals.

Proposed Bd.R. 41.41(h) would require that a supplemental appendix be made part of the reply brief if the examiner entered a new rejection in the examiner's answer and appellant elects to respond to the new rejection in a reply brief. The supplemental appendix would include (1) table of contents, (2) examiner's answer, and (3) all evidence relied upon by the examiner in support of the new rejection which does not already appear in the evidence section of the appendix accompanying the appeal brief, except the specification, any drawings, U.S. patents and published U.S. applications.

Proposed Bd.R. 41.41(i) would provide that an amendment or new evidence may not accompany a reply brief. The Office has found that appellants continue to attempt to file amendments and evidence with reply briefs. If an appellant, after reviewing the examiner's answer, believes that an amendment is appropriate, the appellant may file a request for continued examination or, in the case of a reexamination proceeding, ask that the proceeding be reopened.

Examiner's Response To Reply Brief

Proposed Bd.R. 41.43 would provide that upon consideration of a reply brief, the examiner may withdraw a rejection and reopen prosecution or may enter a supplemental examiner's answer responding to the reply brief.

Supplemental Reply Brief

Proposed Bd.R. 41.44(a) would provide that, if the examiner enters a supplemental examiner's answer, the appellant would be able to file a single supplemental reply brief responding to the supplemental examiner's answer.

Proposed Bd.R. 41.44(b) would provide that the appellant would have to file a supplemental reply brief within two months from the date of the filing of the examiner's supplemental answer.

Proposed Bd.R. 41.44(c) would provide that a request for an extension of time shall be presented as a petition under Proposed Bd.R. 41.3(a) and (c). A decision on the petition shall be governed by Bd.R. 41.4(a).

Proposed Bd.R. 41.44(d) would provide that, except as otherwise set out in this rule, the form and content of a supplemental reply brief are governed by the requirements for appeal briefs as set out in Proposed Bd.R. 41.37. A supplemental reply brief would have to contain, under appropriate headings and in the order indicated, the following items: (1) Table of contents, (2) table of authorities, (3) statement of timeliness, and (4) argument. Proposed Bd.R. 41.44(d) would also provide that the argument portion of a supplement reply brief would be limited to ten pages and to responding to points made in the supplemental examiner's answer. A request to exceed the page limit would be presented as a petition under Proposed Bd.R. 41.3.

Proposed Bd.R. 41.44(e) would provide that a supplemental reply brief would have to contain a statement of timeliness, including a statement of the date the supplemental examiner's answer was entered and the date the supplemental reply is being filed. If the supplemental reply brief is filed after the time specified in this subpart, appellant would have to indicate the date an extension of time was requested and the date the request was granted.

Proposed Bd.R. 41.44(f) would provide that a supplemental reply brief shall be limited to responding to points made in the supplemental examiner's

answer. The supplemental reply brief preferably would adhere to the following format: "On page x, lines y-z of the supplemental examiner's answer, the examiner states that [state what the examiner states]. The response is [state the response]." As part of each response, appellant would have to refer to the page number and line or drawing number of the evidence section of the appendix accompanying the appeal brief or supplemental appendix accompanying the reply brief. No general restatement of the case would be permitted in a supplemental reply brief. A new argument would not be able to be made in a supplemental reply brief.

Proposed Bd.R. 41.44(g) would provide that an amendment or new evidence may not accompany a supplemental reply brief.

Oral Hearing

Proposed Bd.R. 41.47(a) would provide that if the appellant desires an oral hearing, appellant must file, as a separate paper, a written request captioned: "REQUEST FOR ORAL HEARING."

Proposed Bd.R. 41.47(b) would provide that a request for oral hearing shall be accompanied by the fee required by § 41.20(b)(3).

Proposed Bd.R. 41.47(c) would provide that the time for filing a request for an oral hearing would be within two months of the date of entry of the examiner's answer or a supplemental examiner's answer.

Proposed Bd.R. 41.47(d) would provide that a request for an extension of time to request an oral hearing would have to be presented as a petition under § 41.3(a) and (c) of this part. A decision on the petition shall be governed by § 41.4(a) of this part.

Proposed Bd.R. 41.47(e) would provide that if an oral hearing is properly requested, a date for the oral hearing would be set.

Proposed Bd.R. 41.47(f) would provide that if an oral hearing is set, then within such time as the Board may order, appellant shall confirm attendance at the oral hearing. Failure to timely confirm attendance would be taken as a waiver of any request for an oral hearing.

Proposed Bd.R. 41.47(g) would provide that at the time appellant confirms attendance at the oral hearing, appellant would be required to supply a list of technical terms and other unusual words which can be provided to any individual transcribing an oral hearing. The current practice of the Board is to transcribe all oral arguments. A list of technical terms provided by appellant should improve the accuracy of any transcript.

Proposed Bd.R. 41.47(h) would provide that unless otherwise ordered by the Board, argument on behalf of appellant at an oral hearing would be limited to 20 minutes.

Proposed Bd.R. 41.47(i) would provide that at oral hearing only evidence that has been previously presented to, entered by and considered by the primary examiner would be considered and that no additional evidence may be offered to the Board in support of the appeal. An argument not presented in a brief could not be made at the oral hearing.

Proposed Bd.R. 41.47(j) would provide that notwithstanding Proposed Bd.R. 41.47(i), an appellant could rely on and call the Board's attention to a recent court or Board opinion which could have an effect on the manner in which the appeal is decided.

Proposed Bd.R. 41.47(k) would provide that visual aids may be used at an oral hearing. However, visual aids must be limited to copies of documents in the record on appeal. A document not previously entered by the examiner could not be used as a visual aid. When an appellant seeks to use a visual aid, one copy should be provided for each judge and one copy for the record of the appeal.

Proposed Bd.R. 41.47(l) would provide that failure of an appellant to attend an oral hearing would be treated as a waiver of the oral hearing. Over the years the Board has become concerned with the large number of requests for postponements. In some cases, multiple requests in a single appeal are submitted for postponement of an oral hearing. Apart from the fact that a postponement can lead to large patent term adjustments, efficiency dictates that the Board be able to set an oral hearing schedule with an expectation that in a large majority of the cases the oral hearing will timely occur or the appellant will waive oral hearing. The Board will continue to handle requests for postponement of oral hearings on an ad hoc basis. However, postponements would no longer be granted on a routine basis. A request for a postponement made immediately after a notice of oral hearing is mailed is more likely to receive favorable treatment, particularly since it may be possible to set an oral hearing date prior to the originally scheduled oral hearing date.

Decisions and Other Actions by the Board

Proposed Bd.R. 41.50(a) would provide that the Board may affirm or reverse a decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. Proposed Bd.R. 41.50(a) would continue the practice that an affirmance of a rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

Proposed Bd.R. 41.50(b) would provide that the Board may remand an application to the examiner. Upon entry of a remand, the Board would no longer have jurisdiction unless an appellant timely files a request for rehearing. If the request for rehearing does not result in modification of the remand, the Board would then lose jurisdiction. Upon remand, should examiner enter a supplemental examiner's answer in response to the remand, appellant would be required to exercise one of two options to avoid abandonment of the application or termination of the reexamination proceeding. Either option would have to be exercised within two months from the date of the supplemental examiner's answer.

Proposed Bd.R. 41.50(b)(1) specifies the first option and would provide that appellant could request that prosecution be reopened before the examiner by filing a reply under Rule 111, with or without amendment or submission of evidence. Any amendment or evidence would have to be relevant to the issues set forth in the remand or raised in the supplemental examiner's answer. A request that complies with this paragraph would be entered and the application or patent under reexamination would be reconsidered by the examiner under the provisions of Rule 112. A request under Proposed Bd.R. 41.50(b)(1) would be treated as a request to dismiss the appeal.

Proposed Bd.R. 41.50(b)(2) specifies the second option and would provide that appellant could request that the appeal be re-docketed. The request would have to be accompanied by a reply brief as set forth in Proposed Bd.R. 41.41. An amendment or evidence could not accompany the reply brief. A reply brief that is accompanied by an amendment or evidence would be treated as a request to reopen prosecution pursuant to Proposed Bd.R. 41.50(b)(1).

Proposed Bd.R. 41.50(c) would provide that a remand is not a final decision. Following proceedings on remand, and with respect to affirmed rejections and claims not involved in the remand, an appellant could request the Board to enter a final decision so that the appellant could then seek judicial review as to those rejections and claims. Only a final decision of the

Board is subject to appeal. *Copelands' Enterprises, Inc.* v. *CNV, Inc.*, 887 F.2d 1065, 12 USPQ2d 1562 (Fed. Cir. 1989) (*en banc*).

Proposed Bd.R. 41.50(d) would provide that, should the Board have knowledge of a basis not involved in the appeal for rejecting a pending claim, the Board may enter a new rejection. A pending claim could be a claim not rejected by the examiner. A new rejection would not be considered final for purposes of judicial review. A new rejection is not considered a final agency action because the appellant has not explained to the Board, without amendment or new evidence, or to the Office, with an amendment or new evidence or both, why the rejection is not proper. Proposed Bd.R. 41.50(d) places an appellant under a burden to explain to the Board or the Office why a new rejection is not proper before it burdens a court with judicial review. A response by an appellant may convince the Office that a new rejection should be withdrawn. If the Board enters a new rejection, appellant would have to exercise one of two options with respect to the new rejection to avoid dismissal of the appeal as to any claim subject to the new rejection. Either option would have to be exercised within two months from the date of the new rejection.

Proposed Bd.R. 41.50(d)(1) specifies that a first option would be to submit an amendment of the claims subject to a new rejection or new evidence relating to the new rejection or both and request that the matter be reconsidered by the examiner. The proceedings would be remanded to the examiner. A new rejection would be binding on the examiner unless, in the opinion of the examiner, the amendment or new evidence overcomes the new rejection. In the event the examiner maintains the rejection, appellant would be able to again appeal to the Board.

Proposed Bd.R. 41.50(d)(2) specifies that a second option would be to request rehearing pursuant to Proposed Bd.R. 41.52. The request for rehearing would have to be based on the record before the Board and no new evidence or amendments would be permitted.

Proposed Bd.R. 41.50(e) would provide that the Board, in its opinion in support of its decision, could include a recommendation, explicitly designated as such, of how a claim on appeal may be amended to overcome a specific rejection. For the recommendation to be binding, it would have to be explicitly designated as a recommendation. For example, a conclusion or comment by the Board that a claim, notwithstanding appellant's argument, is so broad as to read on the prior art should not be taken as a recommendation that if some undefined limitation is added the claim would be patentable. When the Board makes a recommendation, appellant may file an amendment in conformity with the recommendation. An amendment in conformity with the recommendation would be deemed to overcome the specific rejection. An examiner would have authority to enter an additional rejection of a claim amended in conformity with a recommendation provided that the additional rejection constitutes a new rejection. For example, the examiner may know of additional prior art not known to the Board that would meet the claim as amended. It is because of the possibility that an examiner may know of additional prior art that a recommendation would be expected to be a relatively rare event.

Proposed Bd.R. 41.50(f) would provide that the Board could enter an order requiring appellant to brief additional issues or supply additional evidence or both if the Board believes doing so would be of assistance in reaching a decision on the appeal. Proposed Bd.R. 41.50(f) continues a practice which has been in existence since 1999. See, *e.g.*, (1) 37 CFR 1.196(d) (1999) and (2) Bd.R. 41.50(d). Practice under Bd.R. 41.50(d) has been highly useful and complements the authority of Office personnel to request additional material under Rule 105. Appellant would be given a non-extendable time period within which to respond to the order. In setting the length of the non-extendable time period, the Board would take into account the extent of the information requested and the time of year a response would be due. For example, it is not likely that the Board would set a date for response between Christmas Day and New Year's Day. Failure of appellant to timely respond to the order could result in dismissal of the appeal in whole or in part. An appeal might be dismissed in part if the order sought further briefing or evidence or both related to one rejection but not another rejection, particularly where the two rejections apply to different claims.

Proposed Bd.R. 41.50(g) would provide for extensions of time to respond to actions of the Board under Proposed Bd.R. 41.50(b) and (d).

Proposed Bd.R. 41.50(g) would provide that a request for an extension of time to respond to a request for briefing and information under Proposed Bd.R. 41.50(f) is not authorized. A request for an extension of time to respond to Board action under Proposed Bd.R. 41.50(b) and (d) would be presented as a petition under Bd.R. 41.3(a) and (c). A decision on the petition shall be governed by Bd.R. 41.4(a).

Rehearing

Proposed Bd.R. 41.52(a) would authorize an appellant to file a single request for rehearing.

Proposed Bd.R. 41.52(b) would provide that a request for rehearing would be due within two months from the date of the decision entered by the Board.

Proposed Bd.R. 41.52(c) would provide that a request for an extension of time would have to be presented as a petition under Proposed Bd.R. 41.3(a) and (c). A decision on the petition would be governed by Bd.R. 41.4(a).

Proposed Bd.R. 41.52(d) would provide that a request for rehearing shall state with particularity the points believed to have been misapprehended or overlooked by the Board. A request for rehearing would not be able to exceed ten pages, excluding any table of contents, table of authorities, statement of timeliness and signature block. A request for rehearing would have to contain, under appropriate headings and in the order indicated, the following items: (1) Table of contents, (2) table of authorities, (3) statement of timeliness, and (4) argument.

Proposed Bd.R. 41.52(e) would provide that a statement of timeliness establish that the request for rehearing was timely filed by including a statement of the date the decision sought to be reheard was entered and the date the request for rehearing is being filed. If the request for rehearing is filed after the time specified in this subpart, appellant would be required to indicate the date an extension of time was requested and the date the request was granted.

Proposed Bd.R. 41.52(f) would provide that in a request for rehearing, the argument preferably should adhere to the following format: "On page x, lines y-z of the Board's opinion, the Board states that [set out what was stated]. The point misapprehended or overlooked was made to the Board in [identify paper, page and line where argument was made to the Board]. The response is [state response]." As part of each response, appellant shall refer to the page number and line or drawing element number of the evidence section. No general restatement of the case would be permitted in a request for rehearing. A new argument could not be made in a request for rehearing, except in two instances.

Proposed Bd.R. 41.52(f)(1) would authorize in a first instance an appellant to respond to a new rejection entered pursuant to Proposed Bd.R. 41.50(d)(2).

Proposed Bd.R. 41.52(f)(2) would authorize an appellant to rely on and call the Board's attention to a recent decision of a court or the Board that is relevant to an issue decided in the appeal. Generally, the recent court decision would be a decision of the Supreme Court or the Court of Appeals for the Federal Circuit.

Proposed Bd.R. 41.52(g) would provide that an amendment or new evidence could not accompany a request for rehearing.

Proposed Bd.R. 41.52(h) would provide that a decision will be rendered on a request for rehearing. The decision on rehearing would be deemed to incorporate the decision sought to be reheard except for those portions of the decision sought to be reheard specifically modified on rehearing. A decision on rehearing would be considered final for purposes of judicial review, except when otherwise noted in the decision on rehearing.

Action Following Decision

Proposed Bd.R. 41.54 would provide that, after a decision by the Board and subject to appellant's right to seek judicial review, the proceeding will be returned to the examiner for such further action as may be consistent with the decision by the Board.

Sanctions

Proposed Bd.R. 41.56 would provide for sanctions.

Proposed Bd.R. 41.56(a) would provide that a sanction could be imposed against an appellant for misconduct, including, (1) failure to comply with an order entered in the appeal or an applicable rule, (2) advancing or maintaining a misleading or frivolous request for relief or argument, or (3) engaging in dilatory tactics.

Proposed Bd.R. 41.56(b) would provide that the nature of possible sanctions, includes entry of (1) an order declining to enter a docketing notice, (2) an order holding certain facts to have been established in the appeal, (3) an order expunging a paper or precluding an appellant from filing a paper, (4) an order precluding an appellant from presenting or contesting a particular issue, (5) an order excluding evidence, (6) an order requiring a terminal disclaimer of patent term, (7) an order holding an application on appeal to be abandoned or a reexamination proceeding terminated, (8) an order dismissing an appeal, (9) an order denying an oral hearing, or (10) an order terminating oral hearing.

Whether and which sanction, if any, should be imposed in any specific circumstance would be matters within the discretion of the Board.

Rule Making Considerations

Administrative Procedure Act

The notable changes in the proposed rules are: (1) Providing additional delegated authority from the Director to the Chief Administrative Patent Judge to decide certain petitions authorized by Part 41 as proposed, including requests for extension of time to file certain papers after the appeal brief and requests to enlarge the page limit on certain appeal papers; (2) defining the record on appeal to clarify what documents the Board will consider in resolving the appeal; (3) requiring the notice of appeal to be signed; (4) providing a definition of non-appealable issues; (5) transferring jurisdiction of an appeal to the Board upon entry of a docket notice by the Board; (6) relinquishing the Board's jurisdiction in an appeal when the Board orders a remand or enters a final decision and judicial review is sought or the time for seeking judicial review expires; (7) changing the format and content of the appeal brief to require the following additional sections: (a) Jurisdictional statement, (b) table of contents, (c) table of authorities, and (d) statement of facts; (8) changing the format and content of the appeal brief appendix to include the following additional sections: (a) claim support section, (b) drawing analysis section, (c) means or step plus function analysis section, and (d) an expanded evidence section to include, inter alia, relevant Office action(s) and portions of papers filed by appellant during prosecution; (9) providing page limits for all briefs; (10) prohibiting incorporation by reference in briefs; (11) establishing a format for a reply brief to include: (a) Table of contents, (b) table of authorities, (c) statement of timeliness, (d) statement of facts in response to a new ground of rejection in examiner's answer, (e) argument, and where appropriate, (f) supplemental appendix; (12) providing for a supplemental reply brief, if a supplemental examiner's answer is furnished by the examiner; (13) establishing a format for a supplemental reply brief to include: (a) Table of contents, (b) table of authorities, (c) statement of timeliness, and (d) argument; (14) requiring appellant to supply a list of technical terms and other unusual words at the time of confirmation of the oral hearing to aid in transcription at the oral hearing; (15) eliminating requests for extension of time to respond to a request for further briefing and information by the Board; (16) establishing a format for a request for rehearing to include: (a) Table of contents, (b) table of authorities, (c) statement of timeliness, and (d) argument; and (17) providing sanctions to be imposed on the appellant for misconduct during prosecution of the appeal.

The changes in the proposed rules relate solely to the procedure to be followed in filing and prosecuting an ex parte appeal to the Board. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are "rules of agency organization, procedure, or practice" and exempt from the Administrative Procedure Act's notice and comment requirement); *Merck & Co., Inc.* v. *Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)); *Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) ("it is extremely doubtful whether any of the rules formulated to govern patent and trademark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice'" (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)); *Eli Lilly & Co.* v. *Univ. of Washington*, 334 F.3d 1264, 1269 n.1, 67 USPQ2d 1161, 1165 n.1 (Fed. Cir. 2003) (add parenthetical).

Regulatory Flexibility Act

As previously discussed, the changes in the proposed rules involve interpretive rules, or rules of agency practice and procedure, and prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). Because prior notice and an opportunity for public comment are not required for the changes in the proposed rules, a final Regulatory Flexibility Act analysis is also not required for the changes in the proposed rules. *See* 5 U.S.C. 603. Nevertheless, the USPTO is publishing a notice of proposed rule making in the **Federal Register** and in the Official Gazette of the United States Patent and Trademark Office, in order to solicit

public participation with regard to this rule package.

The USPTO received approximately 443,000 patent applications in Fiscal Year 2006. The proposed rules apply only to those applications where an appeal brief is filed with the Board. In Fiscal Year 2006, approximately 18,500 appeal briefs were filed. Of those 18,500 appeal briefs, approximately 4,000 were filed by small entities. Thus, the number of small entities affected by these proposed rule changes is not substantial (approximately 0.9%). Also, the proposed rules do not disproportionately impact small entities.

The proposed rules which change the format and content of briefs may require the appellant to spend additional time in preparing a compliant brief. The effect of such rules, however, will be to enhance the likelihood that the appealed claims will be allowed without the necessity of further proceeding with the appeal and improve the efficiency of the decision-making process at the Board. Any additional time burden that is imposed by the proposed rules relating to briefs is believed to be *de minimus* in comparison to the reduction in pendency that appellant gains as a result of early identification of allowable claims or a more efficient decision-making process. Moreover, the fees associated with filing an appeal with the Board are set by statute, and are not proposed for change in this rule making. These proposed procedural rules do not significantly increase the cost of filing or prosecuting an appeal before the Board.

Accordingly, these proposed rules do not have significant economic impact on a substantial number of small entities.

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this proposed rule has been reviewed and previously approved by OMB under control number 0651–0031. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this proposed rule would not affect the information collection requirements associated with the information collection under OMB control number 0651–0031.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert Clarke, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office proposes to amend 37 CFR part 41 as follows:

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

1. The authority citation for part 41 is amended to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 132, 133, 134, 135, 306, and 315.

Subpart A—General Provisions

1. In § 41.2, revise the definitions of "Board" and "Contested case" to read as follows:

§ 41.2 Definitions.

* * * * *

Board means the Board of Patent Appeals and Interferences and includes:

(1) For a final Board action in an appeal or contested case, a panel of the Board.

(2) For non-final actions, a Board member or employee acting with the authority of the Board.

* * * * *

Contested case means a Board proceeding other than an appeal under 35 U.S.C. 134. An appeal in an inter partes reexamination proceeding is not a contested case.

* * * * *

2. In § 41.3, revise paragraphs (a) and (b) to read as follows:

§ 41.3 Petitions.

(a) *Deciding official.* A petition authorized by this part must be addressed to the Chief Administrative Patent Judge. In addition to complying with all other requirements of this title, a copy of the petition must also be forwarded to the Office addressed to: Chief Administrative Patent Judge, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope.* This section covers petitions on matters pending before the Board, petitions authorized by this part and petitions seeking relief under 35 U.S.C. 135(c); otherwise see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

(1) Issues committed by statute to a panel.

(2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

* * * * *

3. In § 41.4, revise paragraphs (b) and (c) to read as follows:

§ 41.4 Timeliness.

* * * * *

(b) *Late filings.* (1) A request to revive an application which becomes abandoned or a reexamination proceeding which becomes terminated under §§ 1.550(d) or 1.957(b) or (c) of this title as a result of a late filing may be filed pursuant to § 1.137 of this title.

(2) A late filing that does not result in an application becoming abandoned or a reexamination proceeding becoming terminated under §§ 1.550(d) or 1.957(b) or (c) of this title may be excused upon a showing of excusable neglect or a Board determination that consideration on the merits would be in the interests of justice.

(c) *Scope.* Except to the extent provided in this part, this section

governs proceedings before the Board, but does not apply to filings related to Board proceedings before or after the Board has jurisdiction (§ 41.35), such as:

(1) Extensions during prosecution (see § 1.136 of this title).

(2) Filing of a notice of appeal and an appeal brief (see §§ 41.31(c) and 41.37(c)).

(3) Seeking judicial review (see §§ 1.301 to 1.304 of this title).

Subpart B—Ex Parte Appeals

4. Revise § 41.30 to add a definition of "record on appeal" to read as follows:

§ 41.30 Definitions.

* * * * *

Record on appeal. The record on appeal consists of the specification, drawings, if any, U.S. patents cited by the examiner or appellant, published U.S. applications cited by the examiner or appellant, the appeal brief, including all appendices, the examiner's answer, any reply brief, including any supplemental appendix, any supplemental examiner's answer, any supplemental reply brief, any request for rehearing, any order or decision entered by the Board or the Chief Administrative Patent Judge, and any other document or evidence which was considered by the Board as indicated in any opinion accompanying any order or decision.

5. Revise § 41.31 to read as follows:

§ 41.31 Appeal to Board.

(a) *Notice of appeal.* An appeal is taken to the Board by filing a notice of appeal.

(b) *Fee.* The notice of appeal shall be accompanied by the fee required by § 41.20(b)(1).

(c) *Time for filing notice of appeal.* A notice of appeal must be filed within the time period provided under § 1.134 of this title.

(d) *Extensions of time to file notice of appeal.* The time for filing a notice of appeal is extendable under the provisions of § 1.136(a) of this title for applications and § 1.550(c) of this title for ex parte reexamination proceedings.

(e) *Non-appealable issues.* A non-appealable issue is an issue not subject to an appeal under 35 U.S.C. 134. An applicant or patent owner dissatisfied with a decision of an examiner on a non-appealable issue shall timely seek review by petition before jurisdiction over an appeal is transferred to the Board (§ 41.35). Failure to timely file a petition seeking review of a decision of the examiner related to a non-appealable issue may constitute a waiver to have that issue considered.

6. Revise § 41.33 to read as follows:

§ 41.33 Amendments and evidence after appeal.

(a) *Amendment after notice of appeal and prior to appeal brief.* An amendment filed after the date a notice of appeal is filed and prior to the date an appeal brief is filed may be admitted as provided in § 1.116 of this title.

(b) *Amendment with or after appeal brief.* An amendment filed on or after the date an appeal brief is filed may be admitted:

(1) *To cancel claims.* To cancel claims provided cancellation of claims does not affect the scope of any other pending claim in the application or patent under reexamination, or

(2) *To convert dependent claim to independent claim.* To rewrite dependent claims into independent form.

(c) *Other amendments.* No other amendments filed after the date an appeal brief is filed will be admitted, except as permitted by §§ 41.39(b)(1), 41.50(b)(1), 41.50(d)(1) or 41.50(e) of this subpart.

(d) *Evidence after notice of appeal and prior to appeal brief.* Evidence filed after the date a notice of appeal is filed and prior to the date an appeal brief is filed may be admitted if the examiner determines that the evidence overcomes some or all rejections under appeal and appellant shows good cause why the evidence was not earlier presented.

(e) *Other evidence.* All other evidence filed after the date an appeal brief is filed will not be admitted, except as permitted by §§ 41.39(b)(1), 41.50(b)(1) or 41.50(d)(1) of this subpart.

7. Revise § 41.35 to read as follows:

§ 41.35 Jurisdiction over appeal.

(a) *Beginning of jurisdiction.* The jurisdiction of the Board begins when a docket notice is entered by the Board.

(b) *End of jurisdiction.* The jurisdiction of the Board ends when the Board orders a remand (see § 41.50(b) or § 41.50(d)(1) of this subpart) or enters a final decision (see § 41.2 of this subpart) and judicial review is sought or the time for seeking judicial review has expired.

(c) *Remand ordered by the Director.* Prior to entry of a decision on the appeal by the Board (§ 41.50), the Director may sua sponte order an application or reexamination proceeding on appeal to be remanded to the examiner.

8. Revise § 41.37 to read as follows:

§ 41.37 Appeal brief.

(a) *Requirement for appeal brief.* An appeal brief shall be timely filed to perfect an appeal. Upon failure to file an appeal brief, the proceedings on the appeal are terminated without further action on the part of the Office.

(b) *Fee.* The appeal brief shall be accompanied by the fee required by § 41.20(b)(2) of this subpart.

(c) *Time for filing appeal brief.* Appellant must file an appeal brief within two months from the date of the filing of the notice of appeal (§ 41.31(a)).

(d) *Extension of time to file appeal brief.* The time for filing an appeal brief is extendable under the provisions of § 1.136(a) of this title for applications and § 1.550(c) of this title for ex parte reexamination proceedings.

(e) *Content of appeal brief.* The appeal brief must contain, under appropriate headings and in the order indicated, the following items:

(1) Statement of the real party in interest.

(2) Statement of related cases.

(3) Jurisdictional statement.

(4) Table of contents.

(5) Table of authorities.

(6) Status of claims.

(7) Status of amendments.

(8) Rejections to be reviewed.

(9) Statement of facts.

(10) Argument.

(11) An appendix containing a claims section, a claim support section, a drawing analysis section, a means or step plus function analysis section, an evidence section and a related cases section.

(f) *Statement of real party in interest.* The "statement of the real party in interest" shall identify the name of the real party in interest. The real party in interest must be identified in such a manner as to readily permit a member of the Board to determine whether recusal would be appropriate. Appellant is under a continuing obligation to update this item during the pendency of the appeal.

(g) *Statement of related cases.* The "statement of related cases" shall identify, by application, patent, appeal, interference, or court docket number, all prior or pending appeals, interferences or judicial proceedings, known to appellant, appellant's legal representative or any assignee, and that are related to, directly affect, or would be directly affected by, or have a bearing on the Board's decision in the appeal. A copy of any final or significant interlocutory decision rendered by the Board or a court in any proceeding identified under this paragraph shall be included in the related cases section of the appendix. Appellant is under a continuing obligation to update this item during the pendency of the appeal.

(h) *Jurisdictional statement.* The "jurisdictional statement" shall establish the jurisdiction of the Board to consider the appeal. The jurisdictional statement shall include a statement of

the statute under which the appeal is taken, the date of the decision from which the appeal is taken, the date the notice of appeal was filed, and the date the appeal brief is being filed. If a notice of appeal or an appeal brief is filed after the time specified in this subpart, appellant must also indicate the date an extension of time was requested and, if known, the date the request was granted.

(i) *Table of contents.* A "table of contents" shall list, along with a reference to the page where each item begins, the items required to be listed in the appeal brief (see paragraph (e) of this section), reply brief (see § 41.41(d) of this subpart) or supplemental reply brief (see § 41.44(d) of this subpart), as appropriate.

(j) *Table of authorities.* A "table of authorities" shall list cases (alphabetically arranged), statutes and other authorities along with a reference to the pages where each authority is cited in the appeal brief, reply brief, or supplemental reply brief, as appropriate.

(k) *Status of pending claims.* The "status of pending claims" shall include a statement of the status of all pending claims (e.g., rejected, allowed, cancelled, withdrawn from consideration, or objected to).

(l) *Status of amendments.* The "status of amendments" shall indicate the status of all amendments filed after final rejection (e.g., whether entered or not entered).

(m) *Rejections to be reviewed.* The "rejections to be reviewed" shall set out the rejections to be reviewed, including the claims subject to each rejection.

(n) *Statement of facts.* The "statement of facts" shall set out in an objective and non-argumentative manner the material facts relevant to the rejections on appeal. A fact shall be supported by a reference to a specific page number and, where applicable, a specific line or drawing numerals of the record on appeal. A general reference to a document as a whole or to large portions of a document does not comply with the requirements of this paragraph.

(o) *Argument.* The "argument" shall explain why the examiner is believed to have erred as to each rejection to be reviewed. Any explanation must address all points made by the examiner with which the appellant disagrees and must identify where the argument was made in the first instance to the examiner or state that the argument has not previously been made to the examiner. Any finding made or conclusion reached by the examiner that is not challenged will be presumed to be correct. Each rejection shall be separately argued under a separate heading. For arguments traversing a rejection made under 35 U.S.C. 102, 103 or 112, see also paragraphs (o)(4) through (o)(7) of this section. For arguments traversing other rejections, see also paragraph (o)(8) of this section.

(1) *Claims standing or falling together.* When a rejection applies to two or more claims, as to that rejection, the appellant may elect to have all claims stand or fall together, or argue the separate patentability of individual claims. If the appeal brief fails to make an explicit election, the Board will treat all claims subject to a rejection as standing or falling together, and select a single claim to decide the appeal as to that rejection. Any doubt as to whether an election has been made or whether an election is clear will be resolved against the appellant. Any claim argued separately shall be placed under a subheading identifying the claim by number. A statement that merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(2) *Arguments considered.* Only those arguments which are presented in the argument section of the appeal brief and that address claims set out in the claim support section of the appendix will be considered. Appellant waives all other arguments.

(3) *Format of argument.* Unless a response is purely legal in nature, when responding to a point made in the examiner's rejection, the appeal brief shall specifically identify the point made by the examiner and indicate where appellant previously responded to the point or state that appellant has not previously responded to the point. In identifying any point made by the examiner, the appellant shall refer to a page and, where appropriate, a line, of the record on appeal.

(4) *Rejection under 35 U.S.C. 112, first paragraph.* For each rejection under 35 U.S.C. 112, first paragraph, the argument shall also specify the errors in the rejection and how the rejected claims comply with the first paragraph of 35 U.S.C. 112 including, as appropriate, how the specification and drawings, if any, describe the subject matter defined by the rejected claims, enable any person skilled in the art to which the invention pertains to make and use the subject matter of the rejected claims, or set forth the best mode contemplated by the inventor of carrying out the claimed invention.

(5) *Rejection under 35 U.S.C. 112, second paragraph.* For each rejection under 35 U.S.C. 112, second paragraph, the argument shall also specify how the rejected claims particularly point out and distinctly claim the subject matter which appellant regards as the invention.

(6) *Rejection under 35 U.S.C. 102.* For each rejection under 35 U.S.C. 102 (anticipation), the argument shall also specify why the rejected claims are patentable by identifying any specific limitation in the rejected claims which is not described in the prior art relied upon in support of the rejection.

(7) *Rejection under 35 U.S.C. 103.* For each rejection under 35 U.S.C. 103, if appropriate, the argument shall specify the errors in the rejection and, if appropriate, specify the specific limitations in the rejected claims that are not described in the prior art relied upon in support of the rejection, and explain how those limitations render the claimed subject matter unobvious over the prior art. A general argument that all limitations are not described in a single prior art reference does not satisfy the requirements of this paragraph.

(8) *Other rejections.* For each rejection other than those referred to in paragraphs (o)(4) through (o)(7), the argument shall specify the errors in the rejection, including where appropriate, the specific limitations in the rejected claims upon which the appellant relies to establish error.

(p) *Claims section.* The "claims section" of the appendix shall consist of an accurate clean copy in numerical order of all claims pending in the application or reexamination proceeding on appeal. The status of each claim shall be set out after the claim number and in parentheses (e.g., 1 (rejected), 2 (withdrawn), 3 (objected to), and 4 (allowed)).

(q) *Claim support section.* For each claim argued separately (see paragraph (o)(1) of this section), the "claim support section" of the appendix shall consist of an annotated copy of the claim indicating in bold face between braces ({}) the page and line after each limitation where the limitation is described in the specification as filed.

(r) *Drawing analysis section.* For each claim argued separately (see paragraph (o)(1) of this section) and having at least one limitation illustrated in a drawing or amino acid or nucleotide material sequence, the "drawing analysis section" of the appendix shall consist of an annotated copy of the claim indicating in bold face between braces ({}) where each limitation is shown in the drawings or sequence. If there is no drawing or sequence, the drawing analysis section shall state that there is no drawing or sequence.

(s) *Means or step plus function analysis section.* For each claim argued

separately (see paragraph (o)(1) of this section) and for each limitation that appellant regards as a means or step plus function limitation in the form permitted by the sixth paragraph of 35 U.S.C. 112, the "means or step plus function analysis section" of the appendix shall consist of an annotated copy of the claim indicating in bold face between braces ({}) the page and line of the specification and the drawing figure and element numeral that describes the structure, material or acts corresponding to each claimed function. If there is no means or step plus function limitation, the means or step plus function analysis section shall state that there are not means or step plus function limitations in the claims to be considered.

(t) *Evidence section.* The "evidence section" shall contain only papers which have been entered by the examiner. The evidence section shall include:

(1) A table of contents.

(2) The Office action setting out the rejection on appeal. If the Office action incorporates by reference any other Office action, then the Office action incorporated by reference shall also appear in the evidence section.

(3) All evidence relied upon by the examiner in support of the rejection on appeal (including non-patent literature and foreign application and patent documents), except the specification, any drawings, U.S. patents or published U.S. applications.

(4) The relevant portion of a paper filed by the appellant before the examiner which shows that an argument being made on appeal was made in the first instance to the examiner.

(5) Affidavits and declarations, if any, and attachments to declarations, relied upon by appellant before the examiner.

(6) Other evidence, if any, relied upon by the appellant before the examiner.

(u) *Related cases section.* The "related cases section" shall consist of copies of orders and opinions required to be cited pursuant to paragraph (g) of this section.

(v) *Appeal brief format requirements.* An appeal brief shall comply with § 1.52 of this title and the following additional requirements:

(1) *Page and line numbering.* The pages of the appeal brief, including all sections of the appendix, shall be consecutively numbered using Arabic numerals beginning with the first page of the appeal brief, which shall be numbered page 1. The lines on each page of the appeal brief and, where practical, the appendix shall be consecutively numbered beginning with line 1 at the top of each page.

(2) *Double spacing.* Double spacing shall be used except in headings, tables of contents, tables of authorities and signature blocks. Block quotations must be double spaced and indented.

(3) *Margins.* Margins shall be at least one inch (2.5 centimeters) on all sides. Line numbering may be within the left margin.

(4) *Font.* The font shall be readable and clean, equivalent to 14 point Times New Roman, including the font for block quotations and footnotes.

(5) *Length of appeal brief.* An appeal brief may not exceed 25 pages, excluding any statement of the real party in interest, statement of related cases, table of contents, table of authorities, signature block, and appendix. An appeal brief may not incorporate another paper by reference. A request to exceed the page limit shall be made by petition under § 41.3 filed at least ten calendar days prior to the date the appeal brief is due.

(6) *Signature block.* The signature block must identify the appellant or appellant's representative, as appropriate, and a registration number, a correspondence address, a telephone number, a fax number and an e-mail address.

9. Revise § 41.39 to read as follows:

§ 41.39 Examiner's answer.

(a) *Answer.* If the examiner determines that the appeal should go forward, then within such time and manner as may be established by the Director the examiner shall enter an examiner's answer responding to the appeal brief.

(b) *New rejection in examiner's answer.* An examiner's answer may include a new rejection. If an examiner's answer contains a rejection designated as a new rejection, appellant must, within two months from the date of the examiner's answer, exercise one of the following two options or the application will be deemed to be abandoned or the reexamination proceeding will be deemed to be terminated.

(1) *Request to reopen prosecution.* Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of evidence. Any amendment or evidence must be responsive to the new rejection. A request that complies with this paragraph will be entered and the application or patent under reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. A request under this paragraph will be treated as a request to withdraw the appeal.

(2) *Request to maintain the appeal.* Request that the appeal be maintained by filing a reply brief as set forth in § 41.41 of this subpart. A reply brief may not be accompanied by any amendment or evidence, except an amendment canceling one or more claims which are subject to the new rejection. A reply which is accompanied by evidence or any other amendment will be treated as a request to reopen prosecution pursuant to paragraph (b)(1) of this section.

(c) *Extension of time to file request.* The time for filing a request under § 41.39(b)(1) is extendable under the provisions of § 1.136(a) of this title as to applications and under the provisions of § 1.550(c) of this title as to reexamination proceedings. A request for an extension of time for filing a request under paragraph (b)(2) of this section shall be presented as a petition under § 41.3 of this part.

10. Revise § 41.41 to read as follows:

§ 41.41 Reply brief.

(a) *Reply brief authorized.* An appellant may file a single reply brief responding to the points made in the examiner's answer.

(b) *Time for filing reply brief.* If the appellant elects to file a reply brief, the reply brief must be filed within two months of the date of the mailing of the examiner's answer.

(c) *Extension of time to file reply brief.* A request for an extension of time to file a reply brief shall be presented as a petition under § 41.3 of this subpart.

(d) *Content of reply brief.* A reply brief shall be limited to responding to points made in the examiner's answer. Except as otherwise set out in this section, the form and content of a reply brief are governed by the requirements for an appeal brief as set out in § 41.37 of this subpart. A reply brief may not exceed fifteen pages, excluding any table of contents, table of authorities, statement of timeliness, signature block, and supplemental appendix required by this section. If the examiner enters and designates a rejection as a new rejection, the reply brief may not exceed twenty-five pages, excluding any table of contents, table of authorities, statement of timeliness, signature block, and supplemental appendix required by this section. A request to exceed the page limit shall be made by petition under § 41.3 of this part and filed at least ten calendar days before the reply brief is due. A reply brief must contain, under appropriate headings and in the order indicated, the following items:

(1) Table of contents—see § 41.37(i) of this subpart.

(2) Table of authorities—see § 41.37(j) of this subpart.

(3) Statement of timeliness—see paragraph (e) of this section.

(4) Statement of facts—see paragraph (f) of this section.

(5) Argument.

(6) Supplemental appendix.

(e) *Statement of timeliness.* The "statement of timeliness" shall include the date that the examiner's answer was entered and the date that the reply is being filed. If the reply brief is filed after the time specified in this subpart, appellant must indicate the date an extension of time was requested and the date the request was granted.

(f) *Statement of additional facts.* The "statement of additional facts" shall consist of a statement of the additional facts that appellant believes are necessary to address the points raised in the examiner's answer and, as to each fact, must identify the point raised in the examiner's answer to which the fact relates.

(g) *Argument.* A reply brief is limited to responding to points made in the examiner's answer. Arguments generally restating the case will not be permitted in a reply brief.

(h) *Supplemental appendix.* If the examiner entered a new rejection in the examiner's answer and appellant elects to respond to the new rejection in a reply brief, this item shall include:

(1) A table of contents—see § 41.37(i) of this subpart.

(2) The examiner's answer.

(3) All evidence upon which the examiner relied in support of the new rejection that does not already appear in the evidence section accompanying the appeal brief, except the specification, any drawings, U.S. patents and U.S. published applications.

(i) *No amendment or new evidence.* No amendment or new evidence may accompany a reply brief.

11. Revise § 41.43 to read as follows:

§ 41.43 Examiner's response to reply brief.

Upon consideration of a reply brief, the examiner may withdraw a rejection and reopen prosecution or may enter a supplemental examiner's answer responding to the reply brief.

12. Add § 41.44 to read as follows:

§ 41.44 Supplemental reply brief. [new rule number]

(a) *Supplemental reply brief authorized.* If an examiner enters a supplemental examiner's answer, an appellant may file a single supplemental reply brief responding to the supplemental examiner's answer.

(b) *Time for filing supplemental reply brief.* Appellant must file a supplemental reply brief within two months from the date of the mailing of the examiner's supplemental answer.

(c) *Extension of time to file supplemental reply brief.* A request for an extension of time shall be presented as a petition under § 41.3.

(d) *Content of supplemental reply brief.* Except as otherwise set out in this subparagraph, the form and content of a supplemental reply brief are governed by the requirements for appeal briefs as set out in § 41.37 of this subpart. A supplemental reply brief may not exceed ten pages, excluding the table of contents, table of authorities, and statement of timeliness and signature block. A request to exceed the page limit shall be made by petition under § 41.3 of this part and filed at least ten calendar days before the supplemental reply brief is due. A supplemental reply brief must contain, under appropriate headings and in the order indicated, the following items:

(1) Table of contents—see § 41.37(i) of this subpart.

(2) Table of authorities—see § 41.37(j) of this subpart.

(3) Statement of timeliness—see paragraph (e) of this section.

(4) Argument—see paragraph (f) of this section.

(e) *Statement of timeliness.* The "statement of timeliness" shall establish that the supplemental reply brief was timely filed by including a statement of the date the supplemental examiner's answer was entered and the date the supplemental reply brief is being filed. If the supplemental reply brief is filed after the time specified in this subpart, appellant must indicate the date an extension of time was requested and the date the request was granted.

(f) *Argument.* The "argument" shall be limited to responding to points made in the supplemental examiner's answer. Arguments generally restating the case will not be permitted in a supplemental reply brief.

(g) *No amendment or new evidence.* No amendment or new evidence may accompany a supplemental reply brief.

13. Revise § 41.47 to read as follows:

§ 41.47 Oral hearing.

(a) *Request for oral hearing.* If appellant desires an oral hearing, appellant must file, as a separate paper, a written request captioned: "REQUEST FOR ORAL HEARING".

(b) *Fee.* A request for oral hearing shall be accompanied by the fee required by § 41.20(b)(3) of this subpart.

(c) *Time for filing request for oral hearing.* Appellant must file a request for oral hearing within two months from the date of the examiner's answer or supplemental examiner's answer.

(d) *Extension of time to file request for oral hearing.* A request for an extension of time shall be presented as a petition under § 41.3 of this subpart.

(e) *Date for oral hearing.* If an oral hearing is properly requested, the Board shall set a date for the oral hearing.

(f) *Confirmation of oral hearing.* Within such time as may be ordered by the Board, appellant shall confirm attendance at the oral hearing. Failure to timely confirm attendance will be taken as a waiver of any request for an oral hearing.

(g) *List of terms.* At the time appellant confirms attendance at the oral hearing, appellant shall supply a list of technical terms and other unusual words which can be provided to any individual transcribing an oral hearing.

(h) *Length of argument.* Unless otherwise ordered by the Board, argument on behalf of appellant shall be limited to 20 minutes.

(i) *Oral hearing limited to record.* At oral hearing only the record on appeal will be considered. No additional evidence may be offered to the Board in support of the appeal. Any argument not presented in a brief cannot be raised at an oral hearing.

(j) *Recent legal development.* Notwithstanding subparagraph (i) of this section, an appellant or the examiner may rely on and call the Board's attention to a recent court or Board opinion which could have an effect on the manner in which the appeal is decided.

(k) *Visual aids.* Visual aids may be used at an oral hearing, but must be limited to copies of documents in the record on appeal. At the oral hearing, appellant should provide one copy of each visual aid for each judge and one copy for the record.

(l) *Failure to attend oral hearing.* Failure of an appellant to attend an oral hearing will be treated as a waiver of oral hearing.

14. Revise § 41.50 to read as follows:

§ 41.50 Decisions and other actions by the Board.

(a) *Affirmance and reversal.* The Board may affirm or reverse an examiner's rejection in whole or in part. Affirmance of a rejection of a claim constitutes a general affirmance of the decision of the examiner on that claim, except as to any rejection specifically reversed.

(b) *Remand.* The Board may remand an application to the examiner. If in response to the remand, the examiner enters a supplemental examiner's answer, within two months the appellant shall exercise one of the following two options to avoid

abandonment of the application or termination of a reexamination proceeding:

(1) *Request to reopen prosecution.* Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of evidence. Any amendment or evidence must be responsive to the remand or issues discussed in the supplemental examiner's answer. A request that complies with this paragraph will be entered and the application or patent under reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. A request under this paragraph will be treated as a request to dismiss the appeal.

(2) *Request to maintain the appeal.* The appellant may request that the Board re-docket the appeal (see § 41.35(a) of this subpart) and file a reply brief as set forth in § 41.41 of this subpart. A reply brief may not be accompanied by any amendment or evidence. A reply brief which is accompanied by an amendment or evidence will be treated as a request to reopen prosecution pursuant to paragraph (b)(1) of this section.

(c) *Remand not final action.* Whenever a decision of the Board includes a remand, the decision shall not be considered a final decision of the Board. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board may enter an order making its decision final.

(d) *New rejection.* Should the Board have a basis not involved in the appeal for rejecting any pending claim, it may enter a new rejection. A new rejection shall be considered an interlocutory order and shall not be considered a final decision. If the Board enters a new rejection, within two months appellant must exercise one of the following two options with respect to the new rejection to avoid dismissal of the appeal as to any claim subject to the new rejection:

(1) *Reopen prosecution.* Submit an amendment of the claims subject to a new rejection or new evidence relating to the new rejection or both, and request that the matter be reconsidered by the examiner. The application or reexamination proceeding on appeal will be remanded to the examiner. A new rejection by the Board is binding on the examiner unless, in the opinion of the examiner, the amendment or new evidence overcomes the new rejection. In the event the examiner maintains the new rejection, appellant may again appeal to the Board.

(2) *Request for rehearing.* Submit a request for rehearing pursuant to § 41.52 of this subpart relying on the record on appeal.

(e) *Recommendation.* In its opinion in support of its decision, the Board may include a recommendation, explicitly designated as such, of how a claim on appeal may be amended to overcome a specific rejection. When the Board makes a recommendation, appellant may file an amendment or take other action consistent with the recommendation. An amendment or other action, otherwise complying with statutory patentability requirements, will overcome the specific rejection. An examiner, however, may enter a new rejection of a claim amended in conformity with a recommendation, when appropriate.

(f) *Request for briefing and information.* The Board may enter an order requiring appellant to brief matters or supply information or both that the Board believes would assist in deciding the appeal. Appellant will be given a non-extendable time period within which to respond to the order. Failure of appellant to timely respond to the order may result in dismissal of the appeal in whole or in part.

(g) *Extension of time to take action.* A request for an extension of time to respond to a request for briefing and information under paragraph (f) of this section is not authorized. A request for an extension of time to respond to Board action under paragraphs (b) and (d) of this section shall be presented as a petition under § 41.3 of this subpart.

15. Revise § 41.52 to read as follows:

§ 41.52 Rehearing.

(a) *Request for rehearing authorized.* An appellant may file a single request for rehearing.

(b) *Time for filing request for rehearing.* Any request for rehearing must be filed within two months from the date of the decision entered by the Board.

(c) *Extension of time to file request for rehearing.* A request for an extension of time shall be presented as a petition under § 41.3 of this subpart.

(d) *Content of request for rehearing.* A request for rehearing shall state with particularity the points believed to have been misapprehended or overlooked by the Board. The form of a request for rehearing is governed by the requirements of § 41.37(v) of this subpart, except that a request for rehearing may not exceed ten pages, excluding any table of contents, table of authorities, statement of timeliness, and signature block. A request to exceed the page limit shall be made by petition under § 41.3 at least ten calendar days before the request for rehearing is due. A request for rehearing must contain, under appropriate headings and in the order indicated, the following items:

(1) Table of contents—see § 41.37(i) of this subpart.

(2) Table of authorities—see 41.37(j) of this subpart.

(3) Statement of timeliness—see paragraph (e) of this section.

(4) Argument—see paragraph (f) of this section.

(e) *Statement of timeliness.* The "statement of timeliness" shall establish that the request for rehearing was timely filed by including a statement of the date the decision sought to be reheard was entered and the date the request for rehearing is being filed. If the request for rehearing is filed after the time specified in this subpart, appellant must indicate the date an extension of time was requested and the date the request was granted.

(f) *Argument.* In filing a request for rehearing, the argument shall adhere to the following format: "On page x, lines y–z of the Board's opinion, the Board states that [set out what was stated]. The point misapprehended or overlooked was made to the Board in [identify paper, page and line where argument was made to the Board]. The response is [state response]." As part of each response, appellant shall refer to the page number and line or drawing number of the record on appeal. No general restatement of the case is permitted in a request for rehearing. A new argument cannot be made in a request for rehearing, except:

(1) New rejection. Appellant may respond to a new rejection entered pursuant to § 41.50(d)(2) of this subpart.

(2) Recent legal development. Appellant may rely on and call the Board's attention to a recent court or Board opinion which is relevant to an issue decided in the appeal.

(g) *No amendment or new evidence.* No amendment or new evidence may accompany a request for rehearing.

(h) *Decision on rehearing.* A decision will be rendered on a request for rehearing. The decision on rehearing is deemed to incorporate the underlying decision sought to be reheard except for those portions of the underlying decision specifically modified on rehearing. A decision on rehearing is final for purposes of judicial review, except when otherwise noted in the decision on rehearing.

16. Revise § 41.54 to read as follows:

§ 41.54 Action following decision.

After a decision by the Board and subject to appellant's right to seek

judicial review, the application or reexamination proceeding will be returned to the jurisdiction of the examiner for such further action as may be appropriate consistent with the decision by the Board.

17. Add § 41.56 to read as follows:

§ 41.56 Sanctions.

(a) *Imposition of sanctions.* A sanction may be imposed against an appellant for misconduct, including:

(1) Failure to comply with an order entered in the appeal or an applicable rule.

(2) Advancing or maintaining a misleading or frivolous request for relief or argument.

(3) Engaging in dilatory tactics.

(b) *Nature of sanction.* Sanctions may include entry of:

(1) An order declining to enter a docketing notice.

(2) An order holding certain facts to have been established in the appeal.

(3) An order expunging a paper or precluding an appellant from filing a paper.

(4) An order precluding an appellant from presenting or contesting a particular issue.

(5) An order excluding evidence.

(6) An order requiring terminal disclaimer of patent term.

(7) An order holding an application on appeal to be abandoned or a reexamination proceeding terminated.

(8) An order dismissing an appeal.

(9) An order denying an oral hearing.

(10) An order terminating an oral hearing.

Dated: July 19, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property, and Director of the United States Patent and Trademark Office.

[FR Doc. E7–14645 Filed 7–27–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0292; FRL–8443–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's requests to amend its State Implementation Plan (SIP) for control of particulate matter in 326 IAC 6.5–7–13. Indiana submitted the SIP revision requests to EPA on November 1, 2005 and March 20, 2007. The revisions would change the source name from St. Mary's to Holy Cross Services Corporation (Saint Mary's Campus), and clarify and revise existing particulate matter (PM) emission limits for the boilers at that source to reflect current operating conditions. These revisions will not result in an increase in PM emissions.

DATES: Comments must be received on or before August 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0292, by one of the following methods:

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

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *Hatten.Charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 11, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–14477 Filed 7–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2007–0252; FRL–8446–2]

Approval and Promulgation of Implementation Plans; Texas; Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Texas State Implementation Plan (SIP) submitted by the State of Texas on August 4, 2006, as the Texas Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Annual Abbreviated SIP. The abbreviated SIP revision EPA is proposing to approve includes the Texas methodologies for allocation of annual NO_X allowances for Phase 1 of CAIR, the control periods 2009 through 2014, and for allocating allowances from the compliance supplement pool (CSP) in the CAIR NO_X annual trading program. EPA is proposing to determine that the Texas CAIR NO_X Annual Abbreviated SIP revision satisfies the applicable requirements of a CAIR abbreviated SIP revision. Upon the effective date of approval of the Texas CAIR NO_X Annual Abbreviated SIP revision, EPA by ministerial action will note in the Texas CAIR NO_X Annual Federal Implementation Plan's (FIP) incorporated regulations that the Texas rules for annual NO_X allowances under Phase 1 of CAIR and allocating

allowances from the CSP apply, rather than the Federal FIP rules.

The intended effect of this action is to reduce NO_X emissions from the State of Texas that are contributing to nonattainment of the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS or standard) in downwind states. This action is being taken under section 110 of the Federal Clean Air Act (the Act or CAA).

DATES: Comments must be received on or before August 29, 2007.

ADDRESSES: Comments may be mailed to Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

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: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: July 16, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

[FR Doc. E7–14484 Filed 7–27–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 72, No. 145
Monday, July 30, 2007

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

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting with briefing of the Tennessee Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Monday, August 6, 2007 at the Hamilton County Commissioner Conference Room, 25 Georgia Avenue, Chattanooga, Tennessee. The purpose of the planning meeting with briefing is to give an orientation to members, discuss the Committee's report on school desegregation, receive a briefing on religious freedom for prisoners, and discuss future activities of the Committee.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office by Monday, August 20, 2007. The address is 61 Forsyth Street, SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Ph.D., Regional Director, Southern Regional Office, U.S. Commission on Civil Rights at (404) 562–7000 [TDY 202–376–8116], or by e-mail at: *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 23, 2007.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–14609 Filed 7–27–07; 8:45 am]

BILLING CODE 6335–02–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a conference call of the Virginia Advisory Committee will convene at 11 a.m. and adjourn at 1 p.m. on Friday, August 10, 2007. The purpose of the planning meeting is for the committee to plan conduct an orientation for new committee members and plan future projects.

This conference call is available to the public through the following call-in number: 866–270–0762. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez, Civil Rights Analyst, the Eastern Regional Office, 202–376–7533, TTY 202–376–8116, by 4 p.m., August 3, 2007.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and the Federal Advisory Committee Act.

Dated at Washington, DC, July 25, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–14670 Filed 7–27–07; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a joint request from Tradewinds Furniture Ltd. ("Tradewinds Furniture") and Tradewinds International Enterprise Ltd. ("Tradewinds Intl."), the Department of Commerce ("Department") initiated a changed circumstances review of the antidumping duty order on wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC"). We preliminarily find that Tradewinds Furniture is the successor–in-interest to Nanhai Jiantai Woodwork Co. ("Nanhai Jiantai"), but that Tradewinds Intl. is not the successor–in-interest to Nanhai Jiantai's affiliated exporter, Fortune Glory Industrial Limited ("Fortune Glory").

EFFECTIVE DATE: July 30, 2007.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert A. Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–1904 or 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published in the **Federal Register** the antidumping duty order on WBF from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty*

Order: Wooden Bedroom Furniture From the People's Republic of China, 70 FR 329 (January 4, 2005). As part of the antidumping duty order on WBF from the PRC, Nanhai Jiantai and Fortune Glory received a separate rate of 6.65 percent. *See* 70 FR at 331. On November 20, 2006, the Department published in the **Federal Register** an amended final determination and antidumping duty order on WBF from the PRC, as a result of litigation and a decision by the United States Court of International Trade ("CIT"). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order/Pursuant to Court Decision: Wooden Bedroom Furniture From the People's Republic of China*, 71 FR 67099 (November 20, 2006). As a result of the CIT's decision, Nanhai Jiantai and Fortune Glory received an amended separate rate of 7.24 percent. *See* 71 FR at 67101.

On November 22, 2006, Tradewinds Furniture and Tradewinds Intl. filed a joint submission requesting that the Department conduct a changed circumstances review of the antidumping duty order on WBF from the PRC to confirm that Tradewinds Furniture and Tradewinds Intl. are the successors–in-interest to Nanhai Jiantai and Fortune Glory, respectively ("Joint Request"). On November 30, 2006, Tradewinds Furniture and Tradewinds Intl. submitted a public version of a sales chart provided in their November 22, 2006, request.

On January 18, 2007, the Department published its notice of initiation of a changed circumstances review to determine whether Tradewinds Furniture and Tradewinds Intl. are successors–in-interest to Nanhai Jiantai and Fortune Glory, respectively. *See Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review*, 72 FR 2262 (January 18, 2007). As part of the notice of initiation, the Department invited interested parties to submit comments on the request for a changed circumstances review within 15 days of publication of the notice. *See* 72 FR at 2264. No interested parties provided comments.

On March 30, 2007, the Department issued a questionnaire to Tradewinds Furniture and Tradewinds Intl. regarding their successor–in-interest changed circumstances review request. On April 20, 2007, Tradewinds Furniture and Tradewinds Intl. submitted their response to the Department's questionnaire ("Questionnaire Response"). On June 5, 2007, the Department issued a supplemental questionnaire to Tradewinds Furniture and Tradewinds Intl. On June 12, 2007, Tradewinds Furniture and Tradewinds Intl. submitted their response to the supplemental questionnaire ("Supplemental Response").

Scope of Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[1], highboys[2], lowboys[3], chests of drawers[4], chests[5], door chests[6], chiffoniers[7], hutches[8], and armoires[9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[10]; (9) jewelry armories[11]; (10) cheval

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24" in width, 18" in depth, and 49" in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of*

Continued

mirrors[12]; (11) certain metal parts[13]; (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set; and (13) upholstered beds[14].

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as "wooden . . . beds" and under subheading 9403.50.9080 of the HTSUS as "other . . . wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors . . . framed." This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Results of Review

In a changed circumstances review involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006). Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Tradewinds Furniture Ltd.

In the Joint Request, Tradewinds Furniture claims that it is the successor–in-interest to Nanhai Jiantai. Tradewinds Furniture submitted documentation showing that in February 2004, a government change in administrative boundaries resulted in a change in name for Nanhai Jiantai to Foshan Jiantai Woodwork Co. ("Foshan Jiantai"). Tradewinds Furniture provided documentation showing that this change was in name only, including the State Council of the PRC's approval of the adjustment to the administrative region in Foshan City (*see* Joint Request, at Exhibit 1), the People's Government of Guangdong Province's mandate for implementation of the change (*see* Joint Request, at Exhibit 2), and the alteration detail (*see* Joint Request, at Exhibit 4). Tradewinds Furniture also provided the business licenses and certificates of approval for both Nanhai Jiantai and Foshan Jiantai, in support of its claim that, other than a name change, all other information remained the same. *See* Joint Request, at Exhibits 3 and 5.

Tradewinds Furniture reported that, thereafter, a company (whose name is reported as proprietary, hereinafter referred to as "Company A") purchased the majority of assets of Foshan Jiantai in August 2004. *See* Joint Request, at Exhibit 6; Questionnaire Response, at Exhibit 22 (Asset Transfer Contract). Company A established Tradewinds Furniture to take over Foshan Jiantai's furniture production operations. Tradewinds Furniture provided the PRC certificate of approval, as well as the Foshan City registration and business license, in support of this contention. *See* Joint Request, at Exhibits 7–8; Questionnaire Response, at 1. Tradewinds Furniture reported that Foshan Jiantai is no longer producing WBF or providing any services. *See* Questionnaire Response, at 3. Tradewinds Furniture also stated that it has taken over complete operational control of the furniture production operations from Foshan Jiantai. *See* Supplemental Response, at 1.

Tradewinds Furniture gave a written description of the ownership and management changes from Nanhai Jiantai through to Tradewinds Furniture, which included a discussion of the board of director changes, and noted that 16 out of 19 key management employees of Nanhai Jiantai remain with Tradewinds Furniture. *See* Joint Request, at 6–7 and Exhibits 11–12; Questionnaire Response, at 2; Supplemental Response, at 2–3. Tradewinds Furniture also provided flowcharts in support, which outline these changes from Nanhai Jiantai, through the name change to Foshan Jiantai, and its subsequent acquisition by Company A, through to the establishment of Tradewinds Furniture. *See* Joint Request, at Exhibit 10; Questionnaire Response, at Exhibit 23; Supplemental Response, at Exhibit 28. Tradewinds Furniture also provided charts and descriptions of the changes to the organizational structure, lists of the assets and equipment that were part of Company A's acquisition of Foshan Jiantai, and compared the production facilities and offices used by Nanhai Jiantai to those used by Tradewinds Furniture. *See* Joint Request, at 8–9 and Exhibits 13–16; Questionnaire Response, at 4–5.

In addition, Tradewinds Furniture provided a comparison chart of the international suppliers for Nanhai Jiantai and Tradewinds Furniture, as well as copies of purchase orders placed by both, explaining that changes in suppliers were due to standard

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China: Notice of Final Results of Changed Circumstances Review and Revocation in Part, 71 FR 38621 (July 7, 2006).

[12] Cheval mirrors are, *i.e.*, any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 38621 (January 9, 2007).

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 9403.90.7000.

[14] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

reevaluations of the relationship, as well as non–competitive pricing. *See* Joint Request, at 9–10 and Exhibits 17–18. Further, Tradewinds Furniture stated that it has "substantially the same" customer base as Nanhai Jiantai, provided a customer comparison chart, and explained that the loss of customers and addition of new customers is typical for any company. *See* Joint Request, at 10 and Exhibit 19. Finally, Tradewinds Furniture provided shipping records for Foshan Jiantai and Tradewinds Furniture and stated that there is "significant parity of shipment quantities and values" (both in pieces and in sales). *See* Joint Request, at 11–12 and Exhibits 20–21.

Upon review of the submitted information and material, we preliminarily find that Tradewinds Furniture has provided sufficient evidence in support of its claim that it is the successor–in-interest to Nanhai Jiantai. The name change from Nanhai Jiantai to Foshan Jiantai, Company A's acquisition of the majority of Foshan Jiantai's assets, the creation of Tradewinds Furniture by Company A, and Tradewinds Furniture's current operational control of the furniture production resulted in minimal changes. In their totality, we preliminarily find that Tradewinds Furniture's management, production facilities, supplier relationships and customer base remain essentially the same as that of Nanhai Jiantai. Based upon the above, we preliminarily determine that Tradewinds Furniture is the successor–in-interest to Nanhai Jiantai and, therefore, should be given the same antidumping duty treatment as Nanhai Jiantai.

The cash deposit determination from this changed circumstances review will apply to all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review; Certain Forged Stainless Steel Flanges From India*, 71 FR 31156 (June 1, 2006). This cash deposit rate shall remain in effect until further notice.

Tradewinds International Enterprise Ltd.

In the Joint Request, Tradewinds Intl. claims that it is the successor–in-interest to Fortune Glory. Tradewinds Intl. states that "Fortune Glory continues to operate as the exporter for Tradewinds Furniture" and outlined its current functions and operations. *See* Joint Request, at 2; Questionnaire Response, at 3 and Exhibit 25. Tradewinds Intl. provided a flowchart that indicated board of director changes from Fortune Glory to Tradewinds Intl. *See* Questionnaire Response, at Exhibit 23; Supplemental Response, at Exhibit 28. Tradewinds Intl. elaborated on and provided various documentation on certain name changes, which resulted in the name Tradewinds Intl. *See* Joint Request, at 5 and Exhibit 9; Questionnaire Response, at 4 and Exhibit 26. Tradewinds Intl. also provided the business registration certificates for Fortune Glory and Tradewinds Intl. *See* Questionnaire Response, at 3–4 and Exhibits 24 and 27. Tradewinds Intl. claims that Fortune Glory will transfer its export functions to Tradewinds Intl. when it is named as the successor–in-interest to Fortune Glory, and that "{n}o structural, management, employee, supplier, customer, or other changes are anticipated as a result of the transfer." *See* Questionnaire Response, at 4.

Upon review of the submitted information and material, we preliminarily find that Tradewinds Intl. has failed to provide sufficient evidence in support of its claim that it is the successor–in-interest to Fortune Glory. Tradewinds Intl. admits that Fortune Glory remains the exporter for Tradewinds Furniture and has not transferred its export functions to Tradewinds Intl. The Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See Stainless Steel Flanges From India*, 71 FR 31156. As Tradewinds Intl. has not yet taken over the export functions of Fortune Glory, its current operations are not essentially the same as those of Fortune Glory. While Tradewinds Intl. claims that no changes are anticipated to the structure, management, employees, suppliers, customers, or otherwise, such a claim is speculative at this time, and therefore premature. Based upon the above, we preliminarily determine that Tradewinds Intl. is not the successor–in-interest to Fortune Glory at this time and, therefore, should not be given the same antidumping duty treatment as Fortune Glory.

Public Comment

Interested parties are invited to submit case briefs on these preliminary results no later than seven days after publication of this notice. Rebuttal briefs, limited to arguments raised in the case briefs, may be filed no later than five days after the case brief deadline. Parties are requested to submit with their briefs: (1) a statement of the issue, and (2) a brief summary of the argument. Briefs must be served on interested parties in accordance with 19 C.F.R. 351.309. Any interested party may request a hearing within 20 days of publication of this notice. Any hearing, if requested, will be held no later than 25 days after publication of this notice, unless the Department alters this time limit, pursuant to 19 C.F.R. 351.310(d).

In accordance with 19 C.F.R. 351.216(e), the Department intends to issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

This notice is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 C.F.R. 351.216 and 19 C.F.R. 351.221(c)(3).

Dated: July 23, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–14668 Filed 7–27–07; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with Statutory Import Programs Staff, U.S. Department of Commerce, Room 2104, 14th and Constitution Ave., NW., Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2104, U.S. Department of Commerce.

Docket Number: 07–041. Applicant: University of Georgia, Driftmier Engineering Center, Athens, GA. Instrument: Electron Microscope, Model Inspect F. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to investigate the morphology, size and size distribution of various synthesized nanomaterials. Results will be used to optimize the growth conditions to

achieve controlled growth of nanostructures with desired morphology, size and functionalities. Application accepted by Commissioner of Customs: June 29, 2007.

Docket Number: 07–045. Applicant: Florida Fish and Wildlife Research Institute, Saint Petersburg, FL. Instrument: Electron Microscope, Model JEM–1400. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to visualize the ultrastructure of various organisms to understand growth and disease processes. Examples include studies of: screening for viruses in sea grass, fish testis and ovarian development, termination of harmful algal blooms and the reproductive developmental processes in the blue crab and in clams. Application accepted by Commissioner of Customs: June 11, 2007.

Docket Number: 07–046. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD. Instrument: Electron Microscope, Model Tecnai G2 20 TWIN. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used initially for a large scale brain imaging effort based on thin sections of tissue from model organisms such as the rat, the fruit fly and the nematode. The objective is to provide complete brain circuitry information based on high resolution imaging of these organisms. Application accepted by Commissioner of Customs: July 16, 2007.

Docket Number: 07–048. Applicant: The University of Michigan, Department of Materials Science and Engineering, Ann Arbor, MI. Instrument: Low Voltage Electron Microscope. Manufacturer: Delong Instruments, Czech Republic. Intended Use: The instrument is intended to be used for the design and optimization of materials that can be used to create a stable, sensitive interface between electrically active tissue and electronic devices and to characterize the thickness, morphology, crystallinity, and uniformity of coatings developed to accommodate the variations in mechanical properties, electrical activity, and bioactive response across the interface between a mechanical device and tissue. Application accepted by Commissioner of Customs: July 19, 2007.

Docket Number: 07–042. Applicant: University of Arizona, Department of Physics, Tucson, AZ. Instrument: Low Temperature Ultra-high Vacuum Scanning Tunneling Microscope. Manufacturer: Omicron NanoTechnology GmbH, Germany. Intended Use: The instrument is intended to be used to study several low-dimensional materials including carbon nanotubes and semiconductor nanowires in order to: (1) Correlate electrical properties with optical techniques to understand the role of excitons in the measured optical properties, (2) Determine the limits to carbon nanotube device performance by measuring the scattering lengths which degrade their performance and (3) Develop a fundamental understanding of low-dimensional materials in particular unique aspects of one-dimensional metals.

The instrument must provide a temperature at the sample down to 5 K, cool down time to 5 K as low as 6 hours, with 15 hours between refills, Z-resolution to 0.01 nm and achievable vacuum to 10 to the 11th mbar with guaranteed atomic resolution in constant current and constant height on Au(111). Application accepted by Commissioner of Customs: June 29, 2007.

Dated: July 25, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–14669 Filed 7–27–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for both primary and alternate members of the following seats on its Sanctuary Advisory Council (Council): Education, Fishing, Hawaii County, Honolulu County, Kauai County, Maui County, Native Hawaiian, and Research. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosphy regarding the protection and management of marine resources; and possibly the length of residence in the are affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by August 31, 2006.

ADDRESSES: Application kits may be obtained from Mary Grady, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Mary.Grady@noaa.gov*. Completed applications should be sent to the same address. Applications are also available online at: *http://hawaiihumpbackwhale.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Naomi McIntosh, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Naomi.McIntosh@noaa.gov* or 808.397.2651.

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state and federal governmental jurisdictions.

The Council is supported by three committees: a Research Committee chaired by the Research representative, and Education Committee chaired by the Education representative, and a Conservation Committee chaired by the Conservation representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues ofconcern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 19, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 07–3680 Filed 7–27–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB55

Marine Mammals; File No. 633–1778

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the Center for Coastal Studies, Principal Investigator: Richard Delaney, has been issued an amendment to scientific research Permit No. 633–1778.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Brandy Hutnak or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 21, 2005, notice was published in the **Federal Register** (70 FR 13481) that a scientific research permit (No. 633–1778), issued June 26, 2006 (71 FR 40995), had been requested by the above-named individual. A portion of the action area, as originally requested, was left out of the permit as an oversight, although it was previously analyzed. On March 11, 2007, the applicant requested that the permit be amended to include the entire action area, as requested in the original application. This amendment was issued on July 19, 2007. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

This amendment extends the action area to include all U.S. waters of the North Atlantic Ocean (with the exception of the Gulf of Mexico, the U.S. Virgin Islands, and Puerto Rico).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a supplemental environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 25, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–14672 Filed 7–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board; Notice of Open Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Wednesday August 22, 2007, from 8:30 a.m. to 3:30 p.m. and Thursday August 23, 2007, from 10 a.m. to 3:45 p.m. These times and the agenda topics described below are subject to change. Please refer to the web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, Connecticut 06355, pending approval of a purchase order. Please check the SAB Web site *http://www.sab.noaa.gov* for confirmation of the venue.

Status: The meeting will be open to public participation with a 30-minute public comment period on August 22 (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by August 15, 2007 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after August 15, 2007, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) the Merger of the Ocean Exploration and National Undersea Research Programs; (2) the Results from the Ocean Exploration Advisory Working Group Workshop on Planning the Maiden Voyage of the Okeanos Explorer; (3) Nekton Studies around Bear Seamount; (4) Extended Continental Shelf Exploration; (5) Update on the NOAA Response to the External Review of NOAA's Ecosystem Research and Science Enterprise; (6) Report on the NOAA Response to the National Research Council Decadal Survey; (7) Update on the NOAA Response to the Hurricane Intensity Research Working Group Reports; (8) the Results of the SAB Climate Working Group's Climate Observations and Analysis Program Review; (9) Report on the Recommendations from the Data Archive and Access Requirements Working Group; and (10) Updates from

SAB Working Groups on Partnerships, Fire Weather Research, and Social Science.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, E-mail: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: July 23, 2007.

Mark E. Brown

Chief Financial Officer and Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–14581 Filed 7–27–07; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

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 Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 29, 2007.

FOR FURTHER INFORMATION: Christopher W. Cummings, Division of Clearing and Intermediary Oversight, CFTC, (202) 418-5445; FAX: (202) 418-5426; e-mail: *ccummings@cftc.gov* and refer to OMB Control No. 3038–0049.

SUPPLEMENTARY INFORMATION:

Title: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. Regulation 140.99 was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (2000). Regulation 41.3 requires securities brokers and dealers submitting requests for exemptive orders to provide specified written information in support of such requests. Regulation 41.3 was promulgated in response to the requirement in the Commodity Futures Modernization Act of 2000 that the Commission establish procedures for requesting such orders.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 23, 2007 (72 FR 28959).

Burden statement: The respondent burden for this collection is estimated to average 6 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: Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, Associated Persons, Floor Brokers, Floor Traders, Securities Brokers and Dealers.

Estimated number of respondents: 410.

Estimated total annual burden on respondents: 3,197 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0049 in any correspondence.

Christopher W. Cummings, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 24, 2007.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–3696 Filed 7–27–07; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review: Notice of Intent To Renew Collection 3038–0054, Establishing Procedures for Entities Operating as Exempt Markets

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 Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Riva Spear Adriance, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5494; FAX: (202) 418–5527; e-mail: *radriance@cftc.gov* and refer to OMB Control No. 3038–0054.

SUPPLEMENTARY INFORMATION:

Title: Establishing Procedures for Entities Operating as Exempt Markets, OMB Control No. 3038–0054. This is a request for extension of a currently approved information collection.

Abstract: Sections 2(h)(3) through (5) of the Commodity Exchange Act (Act) provides that exempt commercial markets are markets excluded from the Act's other requirements. The rules implement the qualifying conditions of the exemption. Rule 36.3(a) implements the notification requirements, and rule 36.3(b)(1) establishes information requirements for exempt commercial markets consistent with section 2(h)(5)(B) of the Act. An exempt commercial market may provide the Commission with access to transactions conducted on the facility or it can satisfy its reporting requirements by complying with the Commission's reporting requirements. The Act affirmatively vests the Commission with comprehensive anti-manipulation enforcement authority over these trading facilities. The Commission is

charged with monitoring these markets for manipulation and enforcing the anti-manipulation provisions of the Act. The informational requirements imposed by proposed rules are designed to ensure that the Commission can effectively perform these functions. Section 5d of the Act establishes a category of market exempt from Commission oversight referred to as an "exempt board of trade." Rule 36.2 implements regulations that define those commodities that are eligible to trade on an exempt board of trade. Rule 36.2(b) implements the notification requirements of section 5d of the Act. Rule 36.2(b)(1) requires exempt boards of trade relying on this exemption to disclose to traders that the facility and trading on the facility is not regulated by the Commission. This requirement is necessary to make manifest the nature of the market and to avoid misleading the public.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 22, 2007 (72 FR 28686).

Burden statement: The respondent burden for this collection is estimated to average 20 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: 20.

Estimated number of responses: 20.

Estimated total annual burden on respondents: 200 hours.

Frequency of collection: On Occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0054 in any correspondence. Riva Spear Adriance, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 24, 2007.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–3697 Filed 7–27–07; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review: Notice of Intent To Renew Collection 3038–0055, Privacy of Consumer Financial Information

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 Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before August 29, 2007.

FOR FURTHER INFORMATION OR A COPY CONTACT: Lawrence B. Patent, Deputy Director, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5439; FAX: (202) 418–5536; e-mail: *lpatent@cftc.gov* and refer to OMB Control No. 3038–0055.

SUPPLEMENTARY INFORMATION:

Title: Privacy of Consumer Financial Information, OMB Control No. 3038–0055. This is a request for extension of a currently approved information collection.

Abstract: Section 124 of the Commodity Futures Modernization Act of 2000 ("CFMA") amended the Commodity Exchange Act (the "Act") and added a new Section 5g to the Act to make the Commission a Federal functional regulatory for purposes of applying the provisions of Title V, Subtitle A of the Gramm-Leach-Bliley Act ("GLB Act") addressing consumer privacy to any futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker that is subject to the Commission's jurisdiction with respect to any financial activity. In general, Title V requires financial institutions to provide notice to consumers about the institution's privacy policies and practices, to restrict the ability of a financial institution to share nonpublic personal information about consumers to nonaffiliated third parties, and to permit consumers to prevent the institution from disclosing nonpublic personal information about them to certain non-affiliated third parties by "opting out" of that disclosure. These regulations implement the mandates of Section 124 and Title V of the GLB Act.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 22, 2007 (72 FR 28686).

Burden statement: The respondent burden for this collection is estimated to average .27 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: 4,500.

Estimated number of responses: 342,000.

Estimated total annual burden on respondents: 93,420 hours.

Frequency of collection: On Occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0055 in any correspondence.

Lawrence B. Patent, Deputy Director, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 24, 2007.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–3698 Filed 7–27–07; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

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 Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Division of Clearing and Intermediary Oversight, CFTC, (202) 418–5445; FAX: (202) 418–5426; e-mail: *ccummings@cftc.gov* and refer to OMB Control No. 3038–0049.

SUPPLEMENTARY INFORMATION:

Title: Registration under the Commodity Exchange Act (OMB Control No. 3038–0023). This is a request for extension of a currently approved information collection.

Abstract: The Commodity Exchange Act (Act) authorizes the Commission to deny, revoke or condition registration under the Act if an applicant or registrant is subject to various statutory disqualifications from registration, such as a prior registration revocation or conviction of a felony or certain misdemeanors. The registration application, which must be updated as necessary, requires information about an applicant's or registrant's disciplinary history so that the person's fitness for registration may be evaluated. In addition, basic identifying information is required so that a database will be available to current and prospective customers, the public, and the news media.

The information on registration applications is used to develop a database known as BASIC (Background Affiliation Status Information Center), which is Internet-accessible and consulted frequently by customers, prospective customers, the general public, and the news media to review data provided by applicants and registrants and to compare it to information provided by entities making solicitations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unles 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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 23, 2007 (72 FR 28960).

Burden statement: The respondent burden for this collection is estimated to average .09 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: Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, Associated Persons of each of the foregoing, Floor Brokers, and Floor Traders.

Estimated number of respondents: 70,708.

Estimated total annual burden on respondents: 6,628 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0023 in any correspondence.

Christopher W. Cummings, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 24, 2007.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–3699 Filed 7–27–07; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Invitation to the Public To Collaborate in Furtherance of Our Agency's Strategic Plan

AGENCY: Corporation for National and Community Service.

ACTION: Notice of invitation to the public.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") through this notice informs the public of its policy of inviting potential collaborators to work with the Corporation in achieving the goals set out in its strategic plan. It includes the Corporation's mission statement and a description of the strategic goals and implementation steps that the agency intends on following. This is not a notice of available grant funding or an invitation to apply for grant funding or other financial or material support.

DATES: Collaboration proposals may be submitted at any time until further notice.

ADDRESSES: Collaboration proposals, identified by the Corporation program or strategic goal that is the focus of the proposed activity, may be submitted by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention: Jonathan Williams, Office of Corporate Relations, Room 10301; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or courier to the Corporation's mailroom at Room 8102C at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (202) 606–6644, or by e-mail at: *jwilliams@cns.gov.*

SUPPLEMENTARY INFORMATION: From time to time, the Corporation receives a proposal from a non-government entity interested in collaborating on implementation of one or more initiatives relating to the Corporation's strategic goals as set out in the Strategic Plan. For example, a proposal may involve the Corporation coordinating its grantees to work with the non-government entity in implementing national and community service activities that achieve mutually desirable results. Because such proposals are considered valuable in achieving our strategic goals, by this notice we encourage and invite potential collaborators to study our

Strategic Plan and to submit relevant collaboration proposals.

On February 8, 2006, the Corporation released its Strategic Plan for 2006–2010. The plan, which benefited from extensive public input, is a blueprint for increasing the effectiveness of the Corporation's programs and operations, and for defining the unique role that national service can play in building a culture of citizenship, service, and responsibility in America. A link to the full text of the Strategic Plan and related documents may be found under the "About Us" column at the following Web site: *http://www.nationalservice.gov/.*

Chief elements of the plan include:

• Revised Mission Statement. The Corporation's revised mission statement reads, "Improve lives, strengthen communities, and foster civic engagement through service and volunteering."

• Statement of Guiding Principles. The plan articulates 10 principles, including putting the needs of local communities first and strengthening the public-private partnerships that underpin all of our programs.

• Identification of Five Focus Areas. The plan identities four focus areas where the Corporation intends to make a significant difference in the next five years: (1) Mobilizing More Volunteers; (2) Ensuring a Brighter Future for All of America's Youth; (3) Engaging Students in Communities; (4) Harnessing Baby Boomers' Experience; and (5) Directing resources to address disaster relief and preparedness. Each focus area requires that the Corporation's programs and initiatives work together to achieve common objectives and measurable targets.

• Blueprint for Managerial Excellence. The plan outlines ways to create and foster shared values that strengthen service delivery and ensure workforce accountability.

If your organization is interested in working with the Corporation in achieving its goals, you are encouraged to submit a collaboration proposal that is tied to the Corporation's Strategic Plan, strategic goals, and related programs and initiatives.

Dated: July 24, 2007.

David Eisner,

Chief Executive Officer.

[FR Doc. E7–14653 Filed 7–27–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Expansion of a TRICARE Demonstration Project for the State of Alaska

AGENCY: Department of Defense.

ACTION: Notice of expansion of a TRICARE demonstration project for the State of Alaska.

SUMMARY: This notice is to advise interested parties of an expansion of a Military Health System (MHS) demonstration project entitled TRICARE Provider Reimbursement Demonstration Project for the State of Alaska. The original demonstration notice was published on November 20, 2006 (71 FR 67112–67113) and described a demonstration project to increase reimbursement for individual providers in the State of Alaska. The demonstration project will now also include increased reimbursement for health care services by hospitals that have been designated as Critical Access Hospitals (CAH) in the State of Alaska. TRICARE, under the demonstration project, will reimburse CAHs in a similar manner as they are reimbursed under Medicare. The expansion of the demonstration project will test the effect of this change on CAH provider participation in TRICARE, beneficiary access to care, cost of health care services, military medical readiness, morale and welfare. In particular, the demonstration will test whether the increased costs of provider payments are offset in whole or part by savings in travel costs, lost duty time, and other factors. This demonstration will be conducted under statutory authority provided in 10 U.S.C. 1092.

DATES: *Effective Date:* The expansion of the demonstration will be effective July 1, 2007, and will continue for a period of 3 years from the date of the original demonstration.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems (MB&RS), 16401 E. Centretech Parkway, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to the expansion of the demonstration/Critical Access Hospital portion of the demonstration, Ann N. Fazzini, 303.676.3803.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE demonstration project for the State of Alaska, please see 71 FR 67112–67113. The demonstration notice focused on increased payment rates for individual providers to determine the impact on access to care.

This expansion of the demonstration applies to Critical Access Hospitals (CAH) within the State of Alaska. Hospitals are authorized TRICARE institutional providers under 10 U.S.C. 1079(j)(2) and (4). Under 10 U.S.C. 1079(j)(2), the amount to be paid to hospitals, skilled nursing facilities (SNFs), and other institutional providers under TRICARE, shall, by regulation, "shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare." Under 32 CFR 199.14(a)(1)(ii)(D)(1) through (9) it specifically lists those hospitals that are exempt from the DRG-based payment system. Critical access hospitals are not listed as excluded, thereby making them subject to the DRG-based payment system. Critical access hospitals are not listed as exempt, because at the time this regulatory provision was written, CAHs were not a recognized entity.

Legislation enacted as part of the Balanced Budget Act (BBA) of 1997 authorized states to establish State Medicare Rural Hospital Flexibility Programs, under which certain facilities participating in Medicare could become Critical Access Hospitals (CAHs). CAHs represent a separate provider type with their own Medicare conditions of participation as well as a separate payment method. Since that time, a number of hospitals have taken the necessary steps to be designated as CAHs. Since the statutory authority requires TRICARE to apply the same reimbursement rules as apply to payments to providers of services of the same type under Medicare to the extent practicable, TRICARE has the authority through the publication of a proposed and final rule to exempt critical access hospitals from the DRG-based payment system and adopt a method similar to Medicare principles for these hospitals. The purpose of the demonstration is to provide this exemption immediately to CAHs in the State of Alaska.

Currently under TRICARE, CAHs are subject to the TRICARE DRG-based payment system. Under the demonstration project, CAHs will be reimbursed under a manner similar to the Centers for Medicare and Medicaid Services (CMS) payment methodology of 101 percent of reasonable costs for inpatient care and outpatient care. CAHs in the State of Alaska are currently receiving reimbursement for billed charges for facility charges for outpatient care. Under the demonstration, the 101% of reasonable

costs will be calculated by multiplying the billed charge of each claim by the hospital's cost-to-charge ratio, and then adding 1% to that amount.

B. Current Status of Access

CAH providers in Alaska have notified the Department that they are considering no longer treating military beneficiaries due to low payment rates. The alternatives to local purchase of services for military officials are to transport patients to Seattle or another location for treatment, or to relocate scarce military medical assets to Alaska to provide services. The first is an expensive proposition that brings with it considerable lost duty time and other complications; the second approach is untenable in wartime, and as a practical matter medical practice in Alaska would not provide sufficient opportunity for military medical specialists to maintain their skills.

C. Description of Expansion of Demonstration Project

Under this demonstration, DoD will also waive, for services provided in the State of Alaska, the provisions of 10 U.S.C. 1079(j)(2), as implemented by 32 CFR 199.14(a) that do not exempt CAH providers from the Medicare Diagnostic Related Group payment methodology for inpatient services. Instead, CAHs will be reimbursed under the Centers for Medicare and Medicaid Services (CMS) payment methodology of 101 percent of reasonable costs for inpatient care and outpatient care.

This action will directly increase overall reimbursement levels for CAH providers, and is expected to result in increased access to care for military beneficiaries; reduced travel to Seattle, accompanied by a reduction in lost duty days; and improved morale for military members and families as a result of increased access and reduced separation.

D. Implementation

The expansion of the demonstration will be effective for inpatient admissions on and after July 1, 2007 and for outpatient services provided on and after July 1, 2007.

E. Evaluation

An independent evaluation of the demonstration will be conducted. The evaluation will be designed to use a combination of administrative and survey measures of health care access to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of improving beneficiary access to healthcare by maximizing the potential pool of healthcare providers in Alaska.

Dated: July 24, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–14681 Filed 7–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Developmental Test and Evaluation will meet in closed session on August 22–23, 2007 and September 19–20, 2007 at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. These meetings will examine Test & Evaluation roles and responsibilities, policy and practices, and recommend changes that may contribute to improved success in Initial Operational Test and Evaluation along with quicker delivery of improved capability and sustainability to Warfighters.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will assess: OSD organization roles and responsibilities for T&E oversight; changes required to establish statutory authority for OSD DT&E oversight, and recommend improvements in the DT&E process to discover sustainability problems earlier, and thus improve likelihood of operational sustainability in IOT&E.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decisionmaker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the May 31, 2007 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

Dated: July 23, 2007.

L.M. Bynum,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–3700 Filed 7–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Structure for Transformation will meet in closed session on August 14, 2007, at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting will characterize the degree of changed needed in industry due to the changing nature of DoD and the industrial Base. It will also examine the effectiveness of existing mitigation measures and make recommendations to ensure future competition and innovation throughout all tiers of the defense industrial base. The briefing will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: describe the defense industry required to cope with the international security environment in

the 21st century. Additionally, the task force will address the implications for the industrial base of increased DoD acquisition of services, as well as the implications for the financial viability of the defense industrial base as the sector adapts to changing DoD needs for defense-related products and services.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being present to the Government's decisionmaker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the May 31, 2007 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

Dated: July 23, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–3701 Filed 7–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Special Focus Competition: Postsecondary Student Achievement and Institutional Performance Pilot Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116C.

Dates: Applications Available: July 30, 2007.

Deadline for Transmittal of Applications: August 29, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education. This program supports reforms, innovations, and significant improvements of postsecondary education that respond to problems of national significance and serve as national models.

Priority: In accordance with 34 CFR 75.105(b)(2)(i), we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2007 this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications. This priority encourages proposals designed to support the formation of at least one consortium of institutions of higher education, associations, and/or public and private non-profit organizations (including State agencies) to develop methods and implement mechanisms to measure, assess and report on postsecondary student achievement and institutional performance outcomes at the institutions participating in the consortium. Data reports should be accessible and useful to students, parents, educators, policymakers, institutions, and the public. It is understood that there may be some variation among consortium members—as a result of differences in institution type, mission, academic program or student population—in the data elements collected, assessed, and reported for the purpose of this project.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants or cooperative agreements.

Estimated Available Funds: $2,500,000.

Estimated Average Size of Awards: $2,500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $2,500,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education, combinations of such institutions, and other public and nonprofit institutions and agencies (including State agencies).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–5713, FAX: (202) 502–7877, or by e-mail: *Frank.Frankfort@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the curricula vitae (three-page, condensed vitae are preferred), the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: (July 30, 2007).

Deadline for Transmittal of Applications: August 29, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fund for the Improvement of Postsecondary Education—Special Focus Competition: Postsecondary Student Achievement and Institutional Performance Pilot Program, CFDA Number 84.116C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Fund for the Improvement of Postsecondary Education—Special Focus Competition: Postsecondary Student Achievement and Institutional Performance Pilot Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.326, not 84.326A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp).* These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *FOR FURTHER INFORMATION CONTACT* in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544, FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, *Attention:* CFDA Number 84.116C, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* CFDA Number 84.116C, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* CFDA Number 84.116C, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8

a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* A three-member panel of non-federal reviewers will evaluate each application. Each reviewer assigns points for each selection criterion and prepares evaluation comments.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the FIPSE program depends upon (1) the extent to which funded projects are being replicated (*i.e.*, adopted or adapted by others); and (2) the manner in which projects are being institutionalized and continued after funding. If funded, you will be asked to collect and report data from your project on steps taken toward achieving these goals. Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects.

Institutionalization and replication are important outcomes that ensure the ultimate success of consortia funded through this program.

VII. Agency Contact

For Further Information Contact: Frank Frankfort, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006. Telephone: (202) 502–7513. e-mail: *Frank.Frankfort@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 25, 2007.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E7–14671 Filed 7–27–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 8447–4]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee Meeting (MC).

For information on access or services for individuals with disabilities, please contact Gloria Car, U.S. EPA, at (228) 688–2421 or *car.gloria@epa.gov.* To request accommodation of a disability, please contact Gloria Car, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

DATES: The meeting will be held on Wednesday, August 22, 2007, from 1:30 p.m. to 5 p.m. and Thursday, August 23, 2007, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi, Mississippi, 39530, (228) 688–3726.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Gulf of Mexico Program Alliance—Status Brief; Report on Important Emerging Legislative Actions Relevant to the Alliance and/or Gulf Program; Coastal America Update: Designation of Veracruz Aquarium and J.L. Scott Marine Education Center as Coastal Ecosystem Learning Centers (CELCs); Binational Harmful Algal Bloom Veracruz Monitoring Pilot; NASA Remote Sensing—Gulf of Mexico Alliance Applications Initiative; Wastewater to Wetlands; USGS/DOI Alliance Coordination; and Gulf Regional Sediment Management Master Plan.

The meeting is open to the public.

Dated: July 23, 2007.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. E7–14676 Filed 7–27–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 07–05]

K.E.I. Enterprise dba KEI Logix v. Greenwest Activewear, Inc.; Greenwest Activewear, Inc. v. K.E.I. Enterprise dba KEI Logix and Great White Fleet, Ltd.; Notice of Filing of Cross-Complaint

Notice is given that a cross-complaint has been filed with the Federal Maritime Commission ("Commission") by Greenwest Activewear, Inc. ("Cross-Complainant") against K.E.I. Enterprise dba KEI Logix ("KEI Logix") and Great White Fleet, Ltd. ("Great White") (collectively, "Cross-Respondents") in this proceeding noticed at 72 FR 32,666. Cross-Complainant alleges that Cross-Respondents violated the Shipping Act of 1984 by failing to establish, observe and enforce just and reasonable practices in connection with its shipments of fabric to Guatemala. 46 U.S.C. 41102(c). Cross-Complainant is demanding that Cross-Respondents pay its claim of $152,152.90 for loss of cargo plus attorneys fees. In the alternative, Cross-Complainant asks that its request for damages be offset "by the amount of freight charges claimed by KEI Logix less the amount of KEI Logix invoice relative to the lost shipment * * * and the difference paid to them."

Cross-Complainant asserts that it booked the transport of fabric in August 2006 with KEI Logix from Port Hueneme, California, to Villanueva, Guatemala. KEI Logix and Great White issued separate bills of lading as through bills to the aforementioned ports in California and Guatemala. Great White issued its bill of lading depicting KEI Logix as the shipper. Cross-Complainant alleges that the cargo was stolen while in transit by an inland carrier in Guatemala booked by Great White. In September 2006, Cross-Complainant filed its claim of $152,152.90 for the stolen cargo with KEI Logix, who then presented the claim to Great White for disposition.

Cross-Complainant contends that Great White wrongfully denied the claim by evoking force majeure pursuant to an inland bill of lading that Cross-Complainant believes was never produced. Moreover, Cross-Complainant asserts that Great White failed to prove that the goods were released in Guatemala with the customary escort and security practices required of all carriers for that particular area.

Cross-Complainant alleges that it negotiated the disposition of its claim directly with KEI Logix and continued to do business with the company. Cross-Complainant contends that in May 2007, KEI Logix not only breached the agreement reached by the parties for the disposition of the claim, but also refused to deliver three containers in transit unless Cross-Complainant immediately paid the full amount of its outstanding invoices. Cross-Complainant alleges that KEI Logix did this to recoup the money that it owed to Cross-Complainant in their agreement. Accordingly, to mitigate its prospective damages attributable to KEI Logix's breach, Cross-Complainant asserts that it had no alternative but to tender three checks totaling $101,019.08 for the release of its containers, then to place a stop-payment order on them. Cross-Complainant claims that it offered to reissue the checks and to pay $2,500 in attorneys fees, but KEI Logix declined the offer.

Cross-Complainant requests that the Commission require Cross-Respondents to pay reparations of $152,152.90 for the stolen cargo plus attorneys fees, and to mitigate damages relative to freight charges. Additionally, Cross-Complainant requests that any hearings be conducted in either Washington, DC at the Federal Maritime Commission or in Los Angeles, California.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 07–3692 Filed 7–27–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 14, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. The John Charles Simpson, Jr., Trust; the Angela Katherine Simpson Trust (the Trusts): Simeon A. Thibeaux, Jr., as trustee of the Trusts, all of Alexandria, Louisiana; and John C. Simpson, New Orleans, Louisiana; to retain control of the outstanding shares of Red River Bancshares, Inc., and thereby retain control of Red River Bank, both of Alexandria, Louisiana.

In addition, the Trusts, Simeon Thibeaux, Jr., and John Simpson also have applied to collectively acquire additional voting shares of Red River Bancshares, Inc., and Red River Bank.

Board of Governors of the Federal Reserve System, July 25, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–14656 Filed 7–27–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center 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 August 24, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Greenwoods Financial Group, Inc., Rio, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Greenwood's Bancorporation, Inc., and thereby indirectly acquire The Greenwood's State Bank, both of Lake Mills, Wisconsin.

In connection with this application, Applicant also has applied to acquire The Greenwood's Financial Services, Inc., Lake Mills, Wisconsin, and thereby engage in the sale of insurance in a town less than 5,000, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, July 25, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–14655 Filed 7–27–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science (OPHS) is seeking nominations of qualified individuals to be considered for appointment as members of the Advisory Committee on Blood Safety and Availability (ACBSA). ACBSA is a Federal advisory committee in the Department of Health and Human Services. Management support for the activities of this Committee are the responsibility of the OPHS.

The qualified individuals will be nominated to the Secretary of the Department of Health and Human Services for consideration of appointment as members of the ACBSA. Members of the Committee, including the Chair, are appointed by the Secretary. Members are invited to serve on the Committee for overlapping four-year terms.

DATES: All nominations must be received no later than 4 p.m. EDT on August 31, 2007 at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Dr. Jerry Holmberg, Executive Secretary, Advisory Committee on Blood Safety and Availability; Office of Public Health and Science; Department of Health and Human Services; 1101 Wootton Parkway, Suite 250; Rockville, MD 20852. Telephone: (240) 453–8803.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Holmberg, Executive Secretary, Advisory Committee on Blood Safety and Availability. See **ADDRESSES** for contact information.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Blood Safety and Availability shall provide advice to the Secretary and to the Assistant Secretary for Health. The Committee shall advise on a range of policy issues to include: (1) Definition of public health parameters around safety and availability of the blood and blood products, (2) broad public health, ethical and legal issues related to transfusion and transplantation safety, and (3) the implications for safety and availability of various economic factors affecting product cost and supply.

The ACBSA consists of 18 voting members. The Committee is composed of 12 public members, including the Chair, and six (6) representative members. The public members are selected from State and local organizations, advocacy groups, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations, and from among communities of persons who are frequent recipients of blood or blood products. The six individuals who are appointed as official representative members are selected to serve the interests of the blood and blood products industry or professional organizations associated with transfusion or transplantation safety. The representative members are selected from the following groups: The AABB, the Plasma Protein Therapeutic Association (PPTA), one of the two major distributors of blood on a rotating basis, a trade organization or manufacturer of blood, plasma, or other tissue test kits or equipment, and a purchaser of blood and blood products from major hospital organization.

All ACBSA members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive a stipend for attending Committee meetings and to carry out other Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive a stipend for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill positions on the ACBSA that are scheduled to be vacated in the public member category. The positions are scheduled to be vacated on or before December 31, 2007.

A copy of the Committee charter and roster of the current membership can be obtained by contacting Dr. Holmberg or by accessing the ACBSA Web site at *http://www.hhs.gov/bloodsafety*.

Nominations

In accordance with the charter, persons nominated for appointment as members of the ACBSA should be among authorities knowledgeable in blood banking, transfusion medicine, plasma therapies, transfusion and transplantation safety, bioethics, and/or related disciplines. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment: (a) The name, return address, daytime telephone number and affiliation(s) of the individual being nominated, the basis for the individual's nomination, the category for which the individual is being nominated, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the Committee; (b) the name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact; and (c) a copy of a current curriculum vitae or resume for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department of Health and Human Services is committed to ensuring that women, minority groups, and individuals with physical disabilities are adequately represented on the Committee. Nominations of qualified candidates from these categories are encouraged. The Department also seeks to have geographic diversity reflected in the composition of the Committee.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of the ACBSA are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: July 23, 2007.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E7–14611 Filed 7–27–07; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Decision To Evaluate a Petition To Designate a Class of Employees at Lawrence Livermore National Laboratory, Livermore, CA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at Lawrence Livermore National Laboratory, Livermore, California, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Lawrence Livermore National Laboratory.

Location: All areas.

Job Titles and/or Job Duties: All workers.

Period of Employment: January 1, 1950 through December 31, 1973.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3687 Filed 7–27–07; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Los Alamos National Laboratory, Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 22, 2007, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for radiological exposures while working in operational Technical Areas with a history of radioactive material use at the Los Alamos National Laboratory (LANL) for a number of work days aggregating at least 250 work days from March 15, 1943 through December 31, 1975, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on July 22, 2007, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3688 Filed 7–27–07; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the W.R. Grace site, Erwin, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 22, 2007, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for potential exposure to thorium while working in any of the 100 series buildings or Buildings 220, 230, 233, 234, 301, or 310 at the W.R. Grace site at Erwin, Tennessee for a number of work days aggregating at least 250 work days from January 1, 1958 through December 31, 1970, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on July 22, 2007, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3686 Filed 7–27–07; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b (c)(6). Grant applications for the Announcement of Availability of Funds for Grants regarding Minority Research Infrastructure Support Program (M–RISP) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Minority Research Infrastructure Support Program (M–RISP).

Date: August 23, 2007 (Open on August 23 from 2 p.m to 2:15 p.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427-1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 23, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–3679 Filed 7–27–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Retraction of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of retraction of a new system of records.

SUMMARY: The Centers for Medicare & Medicaid Services CMS inadvertently published a new system of records titled "Post Acute Care Payment Reform/ Continuity of Assessment Report and Evaluation Demonstration and Evaluation (PAC–CARE)" System No. 09–70–0569 in the **Federal Register** (FR) on Thursday, April 19, 2007 (72 FR 19711). CMS is withdrawing the notice due to comments received that a routine use disclosure provision necessary to carry out essential parts of the demonstration project was inadvertently omitted. The notice of a new system of records will be republished at a later date with the routine use included.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. He can also be reached at 410–786–5357 or by e-mail at *walter.stone@cms.hhs.gov*.

Dated: July 18, 2007.

William Saunders,

Acting Deputy Director, Office of Information Services, Centers for Medicare & Medicaid Services.

[FR Doc. E7–14631 Filed 7–27–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Assuring Radiation Protection; Cooperative Agreement; Request for Applications: RFA-FDA-CDRH–07–004; Catalog of Federal Domestic Assistance Number: 93.103

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing its intention to receive and consider applications for the award of a cooperative agreement in fiscal year 2007 (FY07) to provide support in furtherance of FDA's responsibilities, under section 532 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ii), to establish and carry out a comprehensive radiation control program. An estimated amount of support in FY07 will be for up to $400,000, with an additional 5 years of support, subject to the condition that in addition to FDA funds, augmenting funds are transferred to FDA from other Federal agencies to fully support this program. Funds may not be used to fund or conduct international activities or initiatives. As the lead Federal agency, FDA intends to collect funds from all other contributing Federal agencies through Interagency Agreements and fund one award for up to $400,000 in total costs (including both direct and indirect costs). After the first year, additional years of noncompetitive support are predicated upon acceptable performance during the preceding year and the availability of Federal funds.

The cooperative agreement will allow FDA to continue to work with the Nuclear Regulatory Commission and its predecessor organizations, the Environmental Protection Agency and the Federal Emergency Management Agency, to provide financial support for a forum established to foster the exchange of ideas and information

among the States and the Federal Government concerning radiation control. This forum has made it possible for State and Federal agencies to work together to study existing and potential radiological health problems of mutual interest and to apply their increasingly limited resources with maximum efficiency in seeking ways to address these problems, fostering coordination, and providing original views.

II. Award Information

The objective of this cooperative agreement is to coordinate Federal, State, and Tribal activities to achieve effective solutions to present and future radiation control problems. The recipient of this cooperative agreement award will be expected to obtain the States' cooperation and participation on committees and working groups established to deal with individual problems. The recipient will also plan and facilitate an annual meeting, and develop and offer educational activities to demonstrate mutually beneficial techniques, procedures, and systems relevant to the mission of assuring radiation protection. The recipient will establish committees to address, evaluate, and offer solutions for a wide range of radiation health and protection issues. Examples of relevant areas of interest include, but are not limited to: (1) The application of x-rays to the healing arts, (2) the application of medical/nonmedical ionizing radiation, and (3) the control and mitigation of radiation exposure from all sources.

Copyright Material: Applicants and applicants' subgrantees and subcontractors must ensure that any projects developed in whole or in part with Federal funds will be made available to other State, territorial, local, and tribal agencies by FDA or its agents. Any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Federal Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

III. Eligibility Information

This cooperative agreement is available to any domestic private or public nonprofit organization (including State and local units of government) and to any domestic for-profit organization. For-profit organizations must exclude fees or profit from their requested support. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

IV. Submission Information/ Requirements

Applications for this program must be made electronically. To apply, applicants should visit *http://www.grants.gov*[1] and follow the instructions under "Apply for Grants." The required application, SF424 (Research & Related) (also referred to as the "SF424 (R&R)"), can be completed and submitted online. The package should be labeled "Response to FDA RFA number is FD07–004". If you experience technical difficulties with your online submission, you should contact the Grants.gov Customer Response Center. Information about submitting an application electronically can be found at *http://www.grants.gov*. In order to apply electronically, the applicant must have a DUNS number and register in the Central Contractor Registration (CCR) database. In addition, applicants will be required to register with the Credential Provider. Information about this is available at *http://apply.grants.gov/OrcRegister*,[1] or by calling ORC's help desk at 800–816–5548.

Dun and Bradstreet Number (DUNS): As of October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call Dun and Bradstreet at 1–866–705–5711 and identify yourself as a Federal grant applicant.

Central Contractor Registration: Applicants must also register in the Central Contractor Registration (CCR) database. Applicants must have a DUNS number to begin registration in the CCR database. The CCR is a database is a government wide repository of commercial and financial information for all organizations conducting business with the Federal Government. Registration with CCR will eventually become a requirement for grant applicants and is consistent with the government wide management reform to create a citizen-centered Web presence and build e-gov infrastructures in and across agencies to establish a "single face to industry." The preferred method for completing registration is on the Internet at *http://www.ccr.gov*.[1] This Web site provides a CCR handbook with detailed information on data that applicants will need prior to beginning the online registration, as well as steps to walk applicants through the registration process.

Additional information concerning the application process for this cooperative agreement can be found on FDA's Web site (*http://www.fda.gov/cdrh*) and also through the Grants.gov Web site (*http://www.grants.gov*).

Submission Date: The application receipt date August 14, 2007. No supplemental or addendum material will be accepted after the receipt date.

V. Agency Contacts

For additional information regarding the administrative and financial management aspects of this notice, contact Gladys M. Bohler, Food and Drug Administration (HFA–500), 5630 Fishers Lane, Rm. 2105, Rockville, MD 20857; 301–827–7168, FAX: 301–827–7101; e-mail: *gladys.melendez-bohler@fda.hhs.gov*.

For additional information regarding the programmatic aspects of this notice, contact Sara Sutphin, Center for Devices and Radiological Health (HFZ–205), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850; 240–276–3225, FAX: 240–276–3201; e-mail: *Sara.Sutphin@fda.hhs.gov*.

Dated: July 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–14610 Filed 7–27–07; 8:45 am]

BILLING CODE 4160–01–S

[1] (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; Comment Request; Physicians' Experience of Ethical Dilemmas and Resource Allocation

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the Department of Bioethics, National Institutes of Health (NIHDCB) to request approval for a new information collection, Physicians' Experience of Ethical Dilemmas and Resource Allocation. The proposed information collection was previously published in the **Federal Register** on May 17, 2007, on pages 27817–18 and allowed 60–days for public comment. Two public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Physicians' Experience of Ethical Dilemmas and Resource Allocation. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Health care costs are rising ceaselessly and there are currently no generally accepted way of controlling them. This study will access the experience of physicians regarding resource allocation in clinical practice, and how allocation decisions made at other levels shapes this experience. The primary objectives of the study are to determine if physicians make decisions to withhold interventions on the basis of cost, how often they report doing so, what types of care are withheld, and what criteria are used in making such decisions. The findings will provide valuable information concerning: (1) The practice of resource allocation in clinical practice, (2) the possible effects of perceived constraints on this practice; and (3) international comparisons on these two aspects. *Frequency of Response:* Once. *Affected Public:* Individuals or households; Businesses or other for-profit; Not-for-profit institutions. *Type of Respondents:* Physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 250; Estimated *Number of Responses per Respondent: 1; Average Burden Hours per Response:* 0.3674; and Estimated *Total Annual Burden Hours Requested:* 91.85. The annualized cost to respondents is estimated at: $5,218. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Marion Danis, Department of Bioethics, DCB, CC, NIH, Building 10, Room 1C 118, 9000 Rockville Pike, Bethesda, MD 20892–1156, or call non-toll-free number 301–435–8727 or e-mail your request, including your address to: *mdanis@cc.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: July 24, 2007.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Rebecca Chen,

Senior Department Administrator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 07–3681 Filed 7–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals, and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: September 11, 2007.

Open: 8 a.m. to 12:30 p.m.

Agenda: NCRR Director's Report and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 10, Bethesda, MD 20892.

Closed: 1:15 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023, *louiser@ncrr.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institutes's/Center's home page: *http://www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure,

93.306, 93.333, National Institutes of Health, HHS)

Dated: July 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3682 Filed 7–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee, CIDR A.

Date: September 7, 2007.

Time: 9 a.m. 12 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5636 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892–9306, (301)–402–0838, *jr39m@nih.gov.*

Name of Committee: Center for Inherited Disease Research Access Committee, CIDR B.

Date: September 7, 2007.

Time: 12:01 p.m. to 3 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: The National Institutes of Health, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rudy Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20852, (301)–402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: July 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3684 Filed 7–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "HIV/AIDS Program Project Application".

Date: August 20, 2007.

Time: 11 a.m. to 3 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3119, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Thomas J. Palker, PhD, Scientific Review Administrator, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 3119, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–402–8399, *palkert@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3683 Filed 7–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, FASD-Related Application Review.

Date: August 15, 2007.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Katrina L. Foster, PhD, Scientific Review Administrator, National Inst on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3037, Rockville, MD 20852, 301–443–3037, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3685 Filed 7–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1711–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1711–DR), dated July 2, 2007, and related determinations.

DATES: *Effective Date:* July 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 2007.

Crawford and Greenwood Counties for Individual Assistance.

Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Franklin, Osage, and Woodson Countries for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.)

Crawford, Greenwood, and Harper Counties for Public Assistance.

Labette County for Public Assistance (already designated for Individual Assistance.)

Allen, Cowley, Elk, Linn, Miami, Montgomery, Neosho, and Wilson Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.)

Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Franklin, Osage, and Woodson Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–14632 Filed 7–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

DATES: *Effective Date:* July 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2007.

McPherson and Smith Counties for Individual Assistance.

Pottawatomie County for Individual Assistance (already designated for Public Assistance.)

Cowley, Harvey, Marshall, McPherson, Morris, Pawnee, and Smith Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–14635 Filed 7–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1713–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1713–DR), dated July 17, 2007, and related determinations.

DATES: *Effective Date:* July 17, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 17, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from severe storms and flooding during the period of June 2–18, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Barnes, Bowman, Dickey, Grant, LaMoure, Logan, McHenry, Ransom, Richland, Sargent, and Stutsman Counties for Public Assistance.

All counties and Tribes within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–14647 Filed 7–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1707–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1707–DR), dated June 7, 2007, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 7, 2007.

Canadian, Cotton, Grady, Grant, Hughes, Logan, McClain, McIntosh, Pawnee, and Tillman Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–14634 Filed 7–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1709–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

DATES: *Effective Date:* July 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2007.

Baylor, Brown, Callahan, Coleman, Comanche, Erath, Hamilton, Jones, Llano, Mason, Mills, Montague, San Saba, and Wise Counties for Public Assistance, including direct Federal assistance.

Archer and Wichita Counties for Public Assistance, including direct Federal assistance, (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–14633 Filed 7–27–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–566, Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–566, Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization; OMB Control No. 1615–0027.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 28, 2007.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at: rfs.regs@dhs.gov. When submitting comments by e-mail please add the OMB Control Number 1615–0027 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by U.S. Citizenship and Immigration Services, and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 15 minutes (.250) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* annual burden hours. 1,450 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: July 25, 2007.

Richard Sloan

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–14654 Filed 7–27–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 29, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Ronald R. Shimitz, Watertown, SD, PRT–156517.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Patrick T. Beane, Enumclaw, WA, PRT–158704.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: July 13, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–14675 Filed 7–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before August 29, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part

of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (we) solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. 149046

Applicant: Chris T. Thurman, Monitcello, Mississippi.

The applicant requests a permit to purchase, in interstate commerce, one female and one male captive bred Hawaiian (=nene) goose (*Branta* [=*Nesochen*] *sandvicensis*) for enhancing its propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

Permit No. 149068

Applicant: Eric A. VanderWerf, Honolulu, Hawaii.

The applicant requests a permit to take (locate and monitor nests, capture, band, transmitter, collect biological samples, and release) the Oahu elepaio (*Chasiempis sandwichensis ibidis*) on the island of Oahu, Hawaii, take (locate and monitor nests, capture, band, collect biological samples, and release) the Newell' shearwater (*Puffinus auricularis newelli*) on Lehua Islet, Hawaii, and take (capture, band, collect biological samples, and release) the Hawaiian duck (*Anas wyvilliana*) on the islands of Kauai, Oahu, Maui, and Hawaii in the state of Hawaii in conjunction with scientific research for the purpose of enhancing their survival.

Public Review of Comments

We solicit public review and comment on each of these recovery permit applications.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 31, 2007.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–14639 Filed 7–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before August 29, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. 829250

Applicant: Hawaii Wildlife Fund, Volcano, Hawaii

The permittee requests an amendment to take (collect tissue samples) the Pacific hawksbill turtle (*Eretmochelys imbricate*) in conjunction with scientific research on the islands of Maui, Moloka'i, and Hawai'i in the State of Hawaii for the purpose of enhancing its survival.

Public Review of Comments

We solicit public review and comment on this recovery permit application. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: June 20, 2007.

David J. Wesley

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–14640 Filed 7–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before August 29, 2007.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW.,

Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–153351

Applicant: James Kennedy, Denton, Texas.

Applicant requests a permit for research and recovery purposes to survey for American burying beetle (*Nicrophorus americanus*) at Camp Maxey, a Texas National Guard training site on 6,424 acres in Lamar County, Texas.

Permit TE–155371

Applicant: MACTEC, Tulsa, Oklahoma.

Applicant requests a permit for research and recovery purposes to survey for, trap and relocate, and bait away the American burying beetle (*Nicrophorus americanus*) in Oklahoma, Arkansas, Kansas, and Missouri. The purpose of the survey activities will be to determine whether or not the American burying beetle continues to occupy specific locations within their historic range.

Permit TE–155413

Applicant: Murray Itzkowitz, Bethlehem, Pennsylvania.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the endangered Pecos gambusia (*Gambusia nobilis*) and Leon Springs pupfish (*Cyprinodon bovinus*) in Texas.

Permit TE–150490

Applicant: Tetra Tech, Portland, Oregon.

Applicant requests a new permit to conduct presence/absence surveys for the black capped-vireo (*Vireo atricapilla*) for research and recovery purposes in central and west central Texas.

Permit TE–826118

Applicant: Corps of Engineers/Tulsa District, Tulsa, Oklahoma.

Applicant requests an amendment to their permit, for research and recovery purposes, to add authorization to survey for scaleshell (*Leptodea leptodon*) within the jurisdiction of the Corps of Engineers, Tulsa District in Kansas, Oklahoma, and Texas.

Permit TE–155371

Applicant: Coronado National Forest, Tucson, Arizona.

Applicant requests an amendment to their permit, for research and recovery purposes, to add authorization to survey for Gila chub (*Gila intermedia*) within the Coronado National Forest, Arizona and New Mexico.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 7, 2007.

Christopher T. Jones,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E7–14644 Filed7–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
148408	Rick J. Zitzloff	72 FR 17929; April 10, 2007	June 14, 2007.
149169	Chase Fulcher	72 FR 16383; April 4, 2007	June 8, 2007.
149178	Jeffrey C. Krahl	72 FR 19718; April 19, 2007	June 28, 2007.

Dated: July 13, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–14674 Filed 7–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Sporting Conservation Council (Council). We plan to review wildlife conservation endeavors that benefit recreational hunting and wildlife resources and that encourage partnerships among the public, the sporting conservation community, wildlife conservation groups, and State and Federal governments. This meeting is open to the public, and will include a session for the public to comment.

DATES: We will hold the meeting on August 13, from 8 a.m. to 5 p.m. and on August 14, from 8 a.m. to 12 p.m. From

3:30 p.m. to 4:30 p.m. on August 13, we will host a public comment session.

ADDRESSES: On August 12 and 13, the meeting will be held in the Galleon Room at the Best Western Marina Grand Hotel, 300 North Shoreline Road, Corpus Christi, TX 78401.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, AZ 85051–2517; 602–906–5603 (phone); or *Twinkle_Thompson-Seitts@blm.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Council in February 2006 (71 FR 11220, March 6, 2006). The Council's mission is to provide advice and guidance to the Federal Government through the Department of the Interior on how to increase public awareness of: (1) The importance of wildlife resources, (2) the social and economic benefits of recreational hunting, and (3) wildlife conservation efforts that benefit recreational hunting and wildlife resources.

The Secretary of the Interior and the Secretary of Agriculture signed an amended charter for the Council in June 2006 and July 2006, respectively. The revised charter states that the Council will provide advice and guidance to the Federal Government through the Department of the Interior and the Department of Agriculture.

The Council will hold a meeting on the dates shown in the **DATES** section at the address shown in the **ADDRESSES** section. The meeting will include a session for the public to comment.

Dated: July 17, 2007.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. 07–3693 Filed 7–27–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14939–C and F–14939–D; AK–932–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Stebbins Native Corporation. The lands are in the vicinity of Stebbins, Alaska, and are located in:

Kateel River Meridian, Alaska,

T. 27 S., R. 18 W.,
Secs. 19 to 22, inclusive.
Sec. 27.
Containing 2,964.12 acres.
T. 26 S., R. 19 W.,
Secs. 12, 13 and 14;
Secs. 23 to 26, inclusive.
Containing 4,480.00 acres,
T. 25 S., R. 20 W.,
Sec. 33, those lands formerly within Native allotment F–16225.
Containing approximately 40 acres.
Aggregating approximately 7,484 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Stebbins Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 29, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at: *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Renee Fencl,

Land Law Examiner, Branch of Lands and Realty.

[FR Doc. E7–14646 Filed 7–27–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alutiiq Museum and Archaeological Repository, Kodiak, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Alutiiq Museum and Archaeological Repository, Kodiak, AK. The human remains were most likely removed from the Kodiak Archipelago, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Alutiiq Museum and Archaeological Repository professional staff in consultation with representatives of Native Village of Akhiok, Akhiok-Kaguyak, Inc., and Koniag, Inc.

In the late 1960s, a cranium was purchased by Mr. Hass in a Kodiak bar. It is believed that the cranium was removed from Tugidak Island, at the southern end of the Kodiak Island archipelago, AK, by an unknown individual. In May of 1996, Mrs. Hass, the former wife of Mr. Hass, relinquished the human remains to the Alutiiq Museum and Archaeological Repository to determine cultural affiliation and for repatriation (number AM238). No known individual was identified. No associated funerary objects are present.

In 1996, Dr. William Bergen, a physical anthropologist, examined the cranium and determined it is archeological and represents the human remains of an older, adult, female of Eskimo ancestry. This information, and the cranium's most likely Tugidak Island origins, suggests that it is the human remains of an ancestral Alutiiq person. Specifically, Tugidak Island falls within the area traditionally used by the Native Village of Akhiok.

Officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Alutiiq Museum and Archaeological Repository also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains

and the Native Village of Akhiok, Akhiok-Kaguyak, Inc., and Koniag, Inc.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Sven Haakanson, Jr., Executive Director, Alutiiq Museum and Archaeological Repository, 215 Mission Rd., Suite 101, Kodiak, AK 99615, telephone (907) 486–7004, before August 29, 2007. Repatriation of the human remains to the Native Village of Akhiok, Akhiok-Kaguyak, Inc., and Koniag, Inc. may proceed after that date if no additional claimants come forward.

Alutiiq Museum and Archaeological Repository is responsible for notifying the Native Village of Akhiok, Akhiok-Kaguyak, Inc., and Koniag, Inc. that this notice has been published.

Dated: June 27, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–14576 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alutiiq Museum and Archaeological Repository, Kodiak, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Alutiiq Museum and Archaeological Repository, Kodiak, AK. The human remains were removed from unknown locations in the Kodiak Archipelago. AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Alutiiq Museum and Archaeological Repository professional staff in consultation with representatives of the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Native Village of Akhiok; Akhiok-Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak).

In 1995, human remains representing a minimum of one individual were transferred to the Alutiiq Museum and Archaeological Repository from Kodiak Area Native Association's Alutiiq Culture Center (number AM61). Information regarding the collection of the human remains is unknown, although it is likely that the human remains were removed from the Kodiak region. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing a minimum of one individual were transferred to the Alutiiq Museum and Archaeological Repository from the Kodiak Area Native Association's Alutiiq Culture Center (numbers AM 110:217 and AM 110:255). Information regarding the collection of the human remains is unknown. No known individual was identified. No associated funerary objects are present.

In February of 1999, human remains representing a minimum of one individual were turned into the Alutiiq Museum and Archaeological Repository by an unknown individual. Information regarding the collection of the human remains is unknown. No known individual was identified. No associated funerary objects are present.

A review of the human remains suggests they are archeological. Humic staining and worn dentition with no evidence of modern dentistry suggest prehistoric individuals, likely from one of Kodiak's many archeological sites. Archeological data indicate that modern Alutiiqs evolved from archeologically documented societies of the Kodiak region and can trace their ancestry back over 7,500 years in the region. As such, the human remains are likely Native American and most closely affiliated with the modern Kodiak Alutiiq people. Kodiak Alutiiq people are members of the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Native Village of Akhiok; Akhiok-Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak).

Officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of three individuals of Native American ancestry. Officials of the Alutiiq Museum and Archaeological Repository also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Native Village of Akhiok; Akhiok-Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Sven Haakanson, Jr., Executive Director, Alutiiq Museum and Archaeological Repository, 215 Mission Rd., Suite 101, Kodiak, AK 99615, telephone (907) 486–7004, before August 29, 2007. Repatriation of the human remains to the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Native Village of Akhiok; Akhiok-Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak) may proceed after that date if no additional claimants come forward.

Alutiiq Museum and Archaeological Repository is responsible for notifying the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Native Village of Akhiok; Akhiok-Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak) that this notice has been published.

Dated: June 27, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–14577 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alutiiq Museum and Archaeological Repository, Kodiak, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Alutiiq Museum and Archaeological Repository, Kodiak, AK. The human remains were removed from Karluk, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Alutiiq Museum and Archaeological Repository professional staff in consultation with representatives of Koniag, Inc.

In 1985, human remains representing a minimum of one individual were removed from the Karluk One site (49–KAR–00001), also known as New Karluk, in Karluk, AK, at the mouth of the Karluk River, during an excavation led by Dr. Richard Jordan of Bryn Mawr College, Bryn Mawr, PA, with permission from the landowner, Koniag, Inc., an Alutiiq ANCSA corporation. The human remains were taken to the Hunter College Department of Anthropology in New York City for study and storage. In 1999, Robert Kopperl, a graduate student at the University of Washington's Department of Anthropology, gained permission to move the faunal samples from New York to Seattle for use in his doctoral research. During Mr. Kopperl's analyses, the human remains were identified in the faunal samples. In July of 2006, the human remains were transferred to the Alutiiq Museum and Archaeological Repository. No known individual was identified. No associated funerary objects are present.

In 1987, human remains representing a minimum of one individual were removed from the Karluk One site (49–KAR–00001) during an excavation lead by Dr. Jordan of Bryn Mawr College with permission from the landowner, Koniag, Inc., an Alutiiq ANCSA corporation. The human remains were shipped to the Bryn Mawr College Department of Anthropology for study and storage following the excavation. In 1988, the human remains were shipped to the University of Alaska Fairbanks Department of Anthropology. Following Dr. Jordan's death in 1991, the human remains were transferred to the Kodiak Area Native Association's Alutiiq Culture Center. In April of 1995, the entire site collection was transferred to the Alutiiq Museum and Archaeological Repository (number AM193). The human remains were found during a collections storage improvement project in December of 2006. No known individual was identified. No associated funerary objects are present.

In the summer of 1994, human remains representing a minimum of one individual were removed from the Karluk One site (49–KAR–00001) during an excavation led by Rick Knecht of the Kodiak Area Native Association with funding and permission from the landowner, Koniag, Inc., an Alutiiq ANCSA corporation. Following the excavations, the human remains were taken to the Kodiak Area Native Association's Alutiiq Culture Center in Kodiak, AK, for study and storage. In April of 1995, the entire site collection was transferred to the Alutiiq Museum and Archaeological Repository (number AM193). The human remains were found during a collections storage improvement project in December of 2006. No known individual was identified. No associated funerary objects are present.

Karluk One was once a massive Alutiiq village site on the south bank of Karluk Lagoon at the mouth of the Karluk River on southwestern Kodiak Island, AK. Archeological excavations between 1983 and 1995 revealed a series of prehistoric sod houses (circa 700 to 200 years old) beneath the remains of an historic village occupied until 1979. The human remains from Karluk One are all from prehistoric contexts. Extensive carbon dating and typological studies indicate that the site's prehistoric deposits date to the Koniag tradition, the cultural tradition observed at historic contact and ancestral to modern Alutiiqs. The human remains are reasonably believed to be Native American and most closely affiliated with the Kodiak Alutiiq people. Specifically, the human remains were removed from an area of the archipelago traditionally used by the Native Village of Karluk.

Officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least three individuals of Native American ancestry. Officials of the Alutiiq Museum and Archaeological Repository also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Native Village of Karluk and Koniag, Inc.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Sven Haakanson, Jr., Executive Director, Alutiiq Museum and Archaeological Repository, 215 Mission Rd., Suite 101, Kodiak, AK 99615, telephone (907) 486–7004, before August 29, 2007. Repatriation of the human remains to the Native Village of Karluk and Koniag, Inc. may proceed after that date if no additional claimants come forward.

Alutiiq Museum and Archaeological Repository is responsible for notifying the Native Village of Karluk and Koniag, Inc. that this notice has been published.

Dated: July 6, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–14580 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alutiiq Museum and Archaeological Repository, Kodiak, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Alutiiq Museum and Archaeological Repository, Kodiak, AK. The human remains and associated funerary objects were removed from Afognak Island and the City of Port Lions, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations

in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Alutiiq Museum and Archaeological Repository professional staff in consultation with representatives of the Afognak Native Corporation: Native Village of Afognak (formerly the Village of Afognak); Koniag, Inc.; and Native Village of Port Lions.

In July and August of 1993, human remains representing a minimum of two individuals were removed from the Malina Creek site (49–AFG–00005) on northwestern Afognak Island, AK, by Dr. Richard Knecht, an archeologist, during an excavation on conveyed Native lands sponsored by the Afognak Native Corporation. At the conclusion of the excavation, the human remains were taken to the Kodiak Area Native Association's Alutiiq Culture Center for storage. In 1995, the human remains were transferred to the Alutiiq Museum and Archaeological Repository where they are currently stored (accession number AM24). The human remains were discovered during a collections storage improvement project in December of 2006. No known individuals were identified. The eight associated funerary objects are seven wooden planks and one wooden mask bangle.

Malina Creek is a large coastal village site that overlooks Shelikof Strait at the mouth of Malina Creek on the northwestern coast of Afognak Island in Alaska's Kodiak archipelago. More than 4 meters of cultural deposits indicate settlement during each of Kodiak's major cultural traditions - Ocean Bay, Kachemak and Koniag, and historic Alutiiq (Russian era). Based on the stratigraphic context of one of the burials it is reasonably believed that one individual is from the Early Koniag phase of the Koniag tradition. The other individual was removed from slumped deposits along the site's erosion face. Although the depth of this find is unknown, field notes from an adjacent pit test indicate that deposits in this area are prehistoric and that the majority date to the Koniag and Kachemak traditions. As such, the human remains are believed to be Native American and to be most closely affiliated with the contemporary Alutiiq people. Many archeologists believe that people of the Kachemak tradition are ancestral to people of the Koniag tradition who are the direct ancestors of contemporary Alutiiqs. Specifically, the human remains were recovered from an area of the archipelago traditionally used by members of the Native Village of Afognak (formerly the Village of Afognak) and Native Village of Port Lions.

In June of 1994, human remains representing a minimum of one individual were removed from an eroding bank near the City of Port Lions, AK, by Charles Kramer. Mr. Kramer gave the human remains to the Alaska State Troopers in July of 1994. The Alaska State Troopers sent the human remains to the State Office of History and Archaeology and subsequently relinquished control of and transferred the human remains to Kodiak Area Native Association's Alutiiq Culture Center in November 1994. In 1995, the human remains were transferred to the Alutiiq Museum and Archaeological Repository where they are currently stored (accession number AM40). No known individual was identified. No associated funerary objects are present.

Although the exact archeological site from which the human remains originated is not recorded, the findings of the state archeologist suggest that the human remains are those of a prehistoric person. Many archeologists believe that the region's cultural sequence represents a period of evolutionary growth over a 7,500 year period with the earliest colonizers evolving into the Alutiiq societies recorded at historic contact. As such, the human remains are reasonably believed to be Native American and most closely affiliated with the contemporary Native residents of the Kodiak archipelago, the Kodiak Alutiiq. Specifically, the human remains were recovered from an area of the archipelago traditionally used by members of the Native Village of Afognak (formerly the Village of Afognak) and Native Village of Port Lions.

Descendants of the Kodiak Alutiiq are members of the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Koniag, Inc.; and Native Village of Port Lions.

Officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Alutiiq Museum and Archaeological Repository also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the eight objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Koniag, Inc.; and Native Village of Port Lions.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Sven Haakanson, Jr., Executive Director, Alutiiq Museum and Archaeological Repository, 215 Mission Rd., Suite 101, Kodiak, AK 99615, telephone (907) 486–7004, before August 29, 2007. Repatriation of the human remains and associated funerary objects to the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Koniag, Inc.; and Native Village of Port Lions may proceed after that date if no additional claimants come forward.

The Alutiiq Museum and Archaeological Repository is responsible for notifying the Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Koniag, Inc.; and Native Village of Port Lions that this notice has been published.

Dated: July 6, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–14583 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 39 cultural items are stone effigy pendants, glass and shell beads, ceramic sherds, projectile points, bone fragments, metal bells, one worked stone, one ceramic pipe, and one pipe stem fragment.

In 1872, one cultural item was recovered from an unknown location in Trenton, Mercer County, NJ, by C.C. Abbott and F.W. Putnam. It was donated to the Peabody Museum of Archaeology and Ethnology by the Peabody Museum Salem (now the Peabody Essex Museum) through Ernest Dodge in 1952. The one unassociated funerary object is a stone effigy pendant depicting a face.

In 1877, one cultural item was recovered from an unknown location in Trenton, Mercer County, NJ, by C.C. Abbott and donated to the Peabody Museum of Archaeology and Ethnology by Mr. Abbott later that same year. The one unassociated funerary object is a stone effigy pendant depicting a face.

In 1877, one cultural item was recovered from an unknown location in Vincentown, Burlington County, NJ, by C.C. Abbott and donated to the Peabody Museum by Mr. Abbott later that same year. The one unassociated funerary object is a stone effigy pendant depicting a face.

In 1877, one cultural item was likely recovered from "Indian burial ground" in Vincentown, Burlington County, NJ, by C.C. Abbott and donated to the Peabody Museum of Archaeology and Ethnology by Mr. Abbott later that same year. The unassociated funerary object is a stone effigy pendant depicting a face.

The four cultural items described above most likely date to the Middle Woodland period or later (post-A.D. 0). Archeological evidence suggests that face effigy pendants were used by the Delaware people during the Middle Woodland period or later. Consultation, archeological, and ethnographic evidence indicates that these kinds of effigy pendants are known as Mesingw and may be symbolically associated with the Big House Ceremony that likely developed during the Late Woodland or Contact periods (A.D. 1000 - 1500).

In 1879, one cultural item was recovered from an unknown location in Chester County, PA, by Isaac Kirk during a Peabody Museum of Archaeology and Ethnology expedition led by C.C. Abbott. The unassociated funerary object is one set of glass and shell beads.

The cultural item most likely dates to the Contact period or later (post-A.D. 1500), as glass beads were introduced by Europeans as trade items in the post-Contact period.

In 1895, eight cultural items were recovered from the Lalor Field site in Trenton, Mercer County, NJ, by Ernest Volk during a Peabody Museum of Archaeology and Ethnology expedition led by Mr. Volk. The eight unassociated funerary objects are five lots of ceramic sherds, two projectile points, and one ceramic pot base.

The cultural items most likely date to the Middle or Late Woodland periods (A.D. 0 - 1500) and the decoration and/or fabric of the ceramic sherds support this date.

In 1909, 20 cultural items were recovered from the A.K. Rowan Farm site and "burial place near old house" in Trenton, Mercer County, NJ, by Ernest Volk and R.E. Merwin during a Peabody Museum of Archaeology and Ethnology expedition led by Mr. Volk and Mr. Merwin. The 20 unassociated funerary objects are 6 projectile points, 1 stone scraper, 1 set of glass beads, 4 lots of ceramic sherds, 2 worked bone fragments, 3 metal bells, 1 worked stone, 1 stone effigy pendant depicting a face, and 1 kaolin pipe stem fragment.

The cultural items most likely date to the Middle Woodland through Contact periods (A.D. 0 - 1500). The shape of the bifacial lithics (lancelet, small triangular) date to the Middle Woodland period (A.D. 0 - 1000). Brass and European copper objects, glass beads, and Dutch kaolin trade pipes date to the Contact period (A.D. 1500). Archeological evidence suggests that face effigy pendants were used by the Delaware people during the Middle Woodland period or later. Consultation, archeological, and ethnographic evidence indicates that these kinds of effigy pendants are known as Mesingw and may be symbolically associated with the Big House Ceremony that likely developed during the Late Woodland or Contact periods (A.D. 1000 - 1500).

In 1911, two cultural items were recovered from the Riverview Cemetery, on the south shore of the Delaware River, in Trenton, Mercer County, NJ, by Frank Wachter. They were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Wachter through Ernest Volk in 1912. The two unassociated funerary objects are one set of glass beads and one kaolin pipe.

The cultural items most likely date to the early Contact period or later (post-A.D. 1500). Glass beads and kaolin pipes were introduced by Europeans as trade items in the post-Contact period.

Between 1888 and 1917, three cultural items were recovered from the Lalor Field site in Trenton, Mercer County, NJ, by C.C. Abbott and Ernest Volk. They were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Abbott at an unknown date and accessioned into the Museum's collection in 1952. The three unassociated funerary objects are three lots of ceramic sherds.

Between 1888 and 1917, one cultural item was recovered from Deutzville in Hamilton Township, Mercer County, NJ, by C.C. Abbott and Ernest Volk. It was donated to the Peabody Museum of Archaeology and Ethnology by Mr. Abbott at an unknown date and accessioned into the Museum's collection in 1952. The unassociated funerary object is one lot of ceramic sherds.

The four cultural items most likely date to the Middle or Late Woodland periods (A.D. 0 - 1500), as suggested by the decoration and/or fabric of the sherds.

Museum documentation indicates that the 39 cultural items described above were recovered from burial contexts. The Peabody Museum of Archaeology and Ethnology is not in possession of the human remains from these burials. Archeological evidence, museum documentation, and oral histories indicate that the cultural items are from areas considered to be aboriginal homelands and traditional burial areas of the Delaware people.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 39 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; and Delaware Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody

Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before August 29, 2007. Repatriation of the unassociated funerary objects to the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; and Delaware Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: June 27, 2007.

Sherry Hutt,

National NAGPRA Program.

[FR Doc. E7–14578 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from Burlington, Gloucester, and Mercer Counties, NJ, and Chester County, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma (now part of the Cherokee Nation, Oklahoma); and Stockbridge Munsee Community, Wisconsin.

In 1878, human remains representing a minimum of one individual were recovered from Trenton, Mercer Country, NJ, during a Peabody Museum of Archaeology and Ethnology expedition led by C.C. Abbott. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were encountered by workmen who were digging a trench at the Trenton Gas Works in Trenton, NJ. Osteological characteristics indicate that this individual is Native American. This interment most likely dates to the Contact or Historic period (post-A.D. 1500). Copper staining present on the human remains is most likely the result of shroud pin use and supports a date to the Contact or Historic period. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

In 1878, human remains representing a minimum of one individual were recovered from an unknown location in West Chester, Chester County, PA, by Jerome B. Gray, and donated to the Peabody Museum of Archaeology and Ethnology by Mr. Gray later that same year. No known individual was identified. The one associated funerary object is a set of glass beads.

Osteological characteristics indicate that this individual is Native American. This interment most likely dates to the Contact or Historic period (post-A.D. 1500). The glass beads recovered with the human remains support a post-Contact date. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

In 1879, human remains representing a minimum of one individual were recovered from an unknown location in West Chester, Chester County, PA, by Isaac S. Kirk during a Peabody Museum of Archaeology and Ethnology expedition led by C.C. Abbott. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that this individual is Native American with possible mixed ancestry. This interment dates to the Contact or Historic period (post-A.D. 1500). Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

In 1879, human remains representing a minimum of one individual were recovered from an unknown location in Burlington County, NJ, by Michael Newbold during a Peabody Museum of Archaeology and Ethnology expedition led by C.C. Abbott. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that this individual is Native American. This interment most likely dates to the Contact or Historic period (post-A.D. 1500). Copper staining present on the human remains is most likely the result of shroud pin use and supports a date to the Contact or Historic period. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

In 1879, human remains representing a minimum of one individual were recovered from an unknown location in Gloucester County, NJ, by William Klingbeil during a Peabody Museum of Archaeology and Ethnology expedition led by C.C. Abbott. No known individual was identified. The one associated funerary object is a stone platform human effigy pipe.

Osteological characteristics indicate that this individual is Native American. This interment most likely dates to the Contact or Historic period (post-A.D. 1500). Anthropomorphic effigy pipes, such as the one recovered from this interment, are most closely associated with proto-Contact and later time periods in this area. In addition, copper staining present on the human remains is most likely the result of shroud pin use and supports a date to the Contact or Historic period. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

In 1894, human remains representing a minimum of six individuals were recovered from the Lalor Field site in Trenton, Mercer County, NJ, by Ernest Volk during a Peabody Museum of Archaeology and Ethnology expedition led by Mr. Volk. No known individuals were identified. The five associated funerary objects, which were accessioned into the museum's collection in 1952, are one animal mandible with teeth, one notched stone, and three stone implements.

Osteological characteristics indicate that these individuals are Native American. The interments most likely date to the Middle to Late Woodland periods (A.D. 0 - 1500). Artifacts recovered from the grave fill but not associated with the human remains, including lithic flakes and ceramic sherds, support this date. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

Between 1894 and 1895, human remains representing a minimum of seven individuals were recovered from the Lalor Field site in Trenton, Mercer County, NJ, by Ernest Volk during a Peabody Museum of Archaeology and Ethnology expedition led by Mr. Volk. No known individuals were identified. The one associated funerary object is a stone gorget.

Osteological characteristics indicate that these individuals are Native American. The interments most likely date to the Middle to Late Woodland periods (A.D. 0 - 1500). The polished stone gorget associated with the human remains, as well as artifacts recovered from the grave fill, supports this date. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

In 1909, human remains representing a minimum of one individual were recovered from the A.K. Rowan Farm site in Trenton, Mercer County, NJ, by Ernest Volk and R.E. Merwin during a Peabody Museum of Archaeology and Ethnology expedition led by Mr. Volk and Mr. Merwin. No known individual was identified. The eight associated funerary objects are five sets of shell and glass beads, one copper box containing vegetable fiber, one lot of woven fabric, and one lot of hide fragments with metal oxidation.

Osteological characteristics indicate that this individual is Native American. This interment most likely dates to the Contact or Historic period (post-A.D. 1500) and the associated funerary objects recovered with the human remains support this date. In addition, copper staining present on the human remains is most likely the result of shroud pin use and supports a date to the Contact or Historic period. Archeological evidence, museum documentation, and oral histories indicate that the human remains are from an area considered to be part of the aboriginal homelands and traditional burial areas of the Delaware people.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 19 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 16 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; and Delaware Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before August 29, 2007. Repatriation of the human remains and associated funerary objects to the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; and Delaware Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: June 27, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–14625 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains and the associated funerary objects were removed from Kitsap County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Port Gamble Indian Community of the Port Gamble Reservation, Washington and Suquamish Indian Tribe of the Port Madison Reservation, Washington.

At an unknown time, human remains representing a minimum of three individuals were removed from the Old Man House area in Kitsap County, WA, by an unknown person. In 1995, the human remains were formally accessioned as "found in collection" (Burke Accn. #1995–64). No known individuals were identified. The two associated funerary objects are one bag of sediment and one piece of wood.

Minimal museum documentation is associated with the human remains. The human remains were found in the Burke Museum's storage with a note indicating that they were found "at/near O Man House" and the name "A.S. McCrary" with a Seattle address. It is unclear what relationship A.S. McCrary had to the human remains.

At an unknown time, human remains representing a minimum of four individuals are reasonably believed to have been removed from the Old Man House area on the Suquamish Reservation, Kitsap County, WA. The human remains were formally accessioned as "found in collection" in 1995 (Burke Accn. #1995–64). No known individuals were identified. No associated funerary objects are present.

Minimal museum documentation is associated with the human remains. The human remains were found in a box that contained artifacts from the Old Man

House area, but are not believed to be associated funerary objects.

Archeological information suggests that the Old Man House site was used for over 2000 years. The Lushootseed name for the Old Man House site is D'Suq'wub. Members of the Suquamish tribe speak the Lushootseed language. The site is also the location of the long house where "Chief" Sealth, also known as Chief Seattle, a leader of the Suquamish. once lived. The earliest written ethnographic information describing the longhouse referred to as Old Man House was by George Gibbs in 1855.

In 1855, the Point Elliot Treaty allocated the land where Old Man House was to the Suquamish. The Suquamish were later removed from these lands in 1904 and 1905, when the United States government seized the land. The area surrounding the Old Man House area has been subject to many different forms of ownership including private property, state property, or reservation property. Based on the lack of definitive information of removal, the Burke Museum has proceeded as the responsible entity.

At an unknown time, human remains representing a minimum of one individual were reasonably believed to have been removed from Suquamish, Kitsap County, WA, by an unknown person. Minimal museum documentation was associated with the human remains and they were formally accessioned as "found in collection" in 1995 (Burke Accn. #1995–64). The 11 associated funerary objects are 2 pebbles, 1 concretion, 2 lots of rodent feces, 4 stone flakes, 1 nut shell fragment, and 1 stone fragment.

According to ethnographic documentation, the Suquamish tribe aboriginally occupied the area surrounding the town of Suquamish (Swanton 1952; Spier 1936). The Suquamish Reservation was established in the Point Elliott Treaty, which allocated the land where the town of Suquamish is currently located to the Suquamish tribe. The town of Suquamish is located less than a mile from the Old Man House site.

Descendants of the Suquamish are members of the Suquamish Indian Tribe of the Port Madison Reservation, Washington. Based on geographical, archeological, historic, ethnographic, and morphological evidence, the human remains are determined to be Native American and culturally affiliated with the Suquamish Indian Tribe of the Port Madison Reservation, Washington.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 13 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Suquamish Indian Tribe of the Port Madison Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before August 29, 2007. Repatriation of the human remains and associated funerary objects to the Suquamish Indian Tribe of the Port Madison Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Port Gamble Indian Community of the Port Gamble Reservation, Washington and Suquamish Indian Tribe of the Port Madison Reservation, Washington and that this notice has been published.

Dated: June 20, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–14613 Filed 7–27–07; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–948 (Review)]

Individually Quick Frozen Red Raspberries From Chile

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in June 2007 to determine whether revocation of the antidumping duty order on individually quick frozen red raspberries from Chile would be likely to lead to continuation or recurrence of material injury. On July 20, 2007, the Department of Commerce published notice that it was revoking the order effective July 9, 2007, "{b} ecause the domestic interested parties did not participate in this review" (72 FR 39793). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server: (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: July 24, 2007.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E7–14554 Filed 7–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–014]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 10, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–449 and 731–TA–1118–1121 (Preliminary) (Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 13, 2007; Commissioners' opinions are currently scheduled to be transmitted to the

Secretary of Commerce on or before August 20, 2007.)

5. Inv. Nos. 701–TA–450 and 731–TA–1122 (Preliminary) (Laminated Woven Sacks from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 13, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 20, 2007.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 26, 2007.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–14711 Filed 7–27–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–NEW]

Criminal Division; Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Request for registration under the Gambling Devices Act of 1962.

The Department of Justice (DOJ), Criminal Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 28, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Wendy Stebbing, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Criminal Division, Office of Enforcement Operations, JCK Building Room 1042, Washington, DC 20530–0001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Existing collection in use without an OMB control number.

(2) Title of the Form/Collection: Request for Registration under the Gambling Devices Act. Form will be available in paper and web-based format.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: None. Sponsoring component: Criminal Division, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: Not-for-profit institutions, individuals or households, Federal Government, and State, Local or Tribal Government. The form can be used by any entity required to register under the Gambling Devices Act of 1962 (15 U.S.C. 1171–1178).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 2,400 respondents will complete each form within approximately 5 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 200 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 24, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–14603 Filed 7–27–07; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 6, 2007, Wildlife Laboratories, 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine Hydrochloride (9059),a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for sale to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 29, 2007.

This procedure is to be conducted simultaneously with, and independent

of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: July 24, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–14648 Filed 7–27–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 19, 2007.

The Department of Labor has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). Copies of these ICRs, with applicable supporting documentation; including inter alia a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816 / Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *John_Kraemer@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

AGENCY: Department of Labor / Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180).

OMB Control Number: 1218–0221.

Estimated Number of Respondents: 20,000.

Estimated Total Burden Hours: 174,062.

Affected Public: Private sector: Business or other for-profits.

Description: The information collection requirements contained in 29 CFR 1910.180 require that monthly inspections be performed on cranes and running ropes and that a certification record be prepared. Ropes which have been idle for a month or more are required to undergo a thorough inspection and a certification record must be generated. The purpose of each of these requirements is to prevent employees from using unsafe cranes and ropes, thereby, reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

AGENCY: Department of Labor / Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Overhead and Gantry Cranes Standard (29 CFR 1910.179).

OMB Control Number: 1218–0224.

Estimated Number of Respondents: 35,000.

Estimated Total Burden Hours: 360,144.

Affected Public: Private sector: Business or other for-profits.

Description: The purpose of the information collection requirements in 29 CFR 1910.179 is to prevent death and serious injuries among employees by ensuring that all critical components of the crane are inspected and tested on a periodic basis and that the crane is not used to lift loads beyond its rated capacity.

AGENCY: Department of Labor / Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)).

OMB Control Number: 1218–0229.

Estimated Number of Respondents: 295,000.

Estimated Total Burden Hours: 1,373,054.

Affected Public: Private sector: Business or other for-profits.

Description: The inspection and certification records required by the Mechanical Power Presses Standard are intended to ensure that mechanical power presses are in safe operating condition, and that all safety devices are working properly. The failure of these safety devices could cause serious injury or death to an employee.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–14349 Filed 7–27–07; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143, License No. SNM–124]

Nuclear Fuel Services, Inc.; Notice of Publication of Confirmatory Order and Opportunity for Hearing

The attached Confirmatory Order was issued on February 21, 2007. Although, originally, designated as Official Use Only, upon further review by NRC Staff, it has been determined that this Confirmatory Order can now be released publicly in its entirety, given that it does not identify current security issues. Accordingly, it is being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity to request a hearing on the Confirmatory Order. The effective date of the Confirmatory Order remains February 21, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance

with Section VI of the Confirmatory Order.

For the Nuclear Regulatory Commission.

Dated this 18th day of July 2007.

William D. Travers,

Regional Administrator.

Attachment—In the Matter of Nuclear Fuel Services, Inc., Erwin, Tennessee; Confirmatory Order Modifying License (Effective Immediately)

I

Nuclear Fuel Services, Incorporated (Licensee) is the holder of Special Nuclear Materials License No. SNM–124 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70 on July 2, 1999. The license authorizes the operation of NFS (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Erwin, Tennessee.

This Confirmatory Order is the result of an agreement reached during alternative dispute resolution (ADR) sessions conducted on September 28 and November 30, 2006.

II

Recent NRC inspections and investigations at NFS have resulted in the identification of the following apparent violations for which escalated enforcement action is being considered:

A. On June 22, 2005, an NFS supervisor willfully failed to wear a full face respirator while performing maintenance and repairs on a Building 302 calciner as required by Safety Condition S–1 of Special Nuclear Materials License No. SNM–124, Section 3.1.2 and 3.1.3 of the License Application, Procedure NFS–GH–03, "Radiation Work Permits, Revision 11, and Standard Radiation Work Permit (RWP # 05–04–032) (EA–06–129).

B. On March 8, 2006, NFS failed to meet the performance requirements of Section IV of a July 2000 Confirmatory Order Modifying License and NFS Safeguards Contingency Response Plan, Revision 0; dated October 26, 2004; Section 3.3, Module 3, subparagraph 3.3.1, during a force-on-force exercise (EA–06–133).

C. On May 31, 2005, an NFS acting building manager willfully transferred solvent extraction raffinate waste solution to the condensate waste storage area, Tank–5A01, without the approval of Building Supervision, Industrial Safety or NCS through work instructions, as required by Safety Condition S–1 of Special Nuclear Materials License No. SNM–124, Section 2.7 of the License Application, and Standard Operating Procedure (SOP) 409, Caustic and Condensate Discard Tank, Revision 2 (EA–06–141).

D. On March 4, June 30, and November 9, 2005, and on May 13, 2006, NFS failed to secure or properly attend Special Nuclear Material, as required by the NFS Physical Protection Plan (PPP), Revision 2, Section 5.8; Storage of Strategic SNM, Subsection 5.8.3, Process Material Access Areas (EA–06–160).

E. On March 6, 2006, NFS inadvertently transferred high enriched uranyl nitrate (HEUN) solution into an enclosure that was not approved for operation. The violations involved: (1) The failure to establish management measures for the solvent extraction tray dissolver filter enclosure drain system as required by 10 CFR 70.62(d), which resulted in the failure to ensure that the filter enclosure met performance requirements of 10 CFR 70.61(d) for limiting the risk of a nuclear criticality accident under the credible abnormal condition; (2) the failure to notify the NRC within one hour of discovery of an event that constituted a condition whereby the licensee recognized that a spill of HEUN solution had occurred into an unapproved and unfavorable geometry enclosure and that no safety controls or items relied on for safety (IROFS) were available and reliable to prevent a nuclear criticality accident, as required by 10 CFR 70, Appendix A, (a)(4)(ii): (3) the failure to establish a configuration management system to evaluate, implement, and track changes to the filter enclosure M205 as required by 10 CFR 70.72(a); (4) the failure to verify proper installation of the solvent extraction tray dissolver filter enclosure drains, as required by Safety Condition S–1 of the license and license application License Application Section 4.1.1.1.3; (5) the failure to assume in NCS analysis for the tray dissolver system as required by the license and license application Section 4.1.1, that a credible abnormal condition could occur, specifically fissile solution being misdirected from the solvent extraction feed transfer line to the tray dissolver filter enclosure, as required by the license and license application Section 4.1.1; (6) the failure to conduct SNM operations and safety function activities with procedures, as required by Safety Condition S–1 of the license and Section 2.7 of the license application; (7) the failure to report to plant management, the discovery of previous instances of yellow solution in enclosure 2M05, in accordance with Safety Condition S–1 of the license, Section 2.7 of the license application, Procedure NFS–HS–CL–26, Nuclear Criticality Safety for the BLEU Preparation Facility, Revision 3, April 29, 2005, Section 4.1.2, and Procedure NFS–GH–65, Problem Identification, Revision 3, October 6, 2005, Section 5.1; and (8) the failure to assure the requirements in 10 CFR 70.61(d) were met, in that the solvent extraction room did not meet performance requirements for criticality safety with respect to the credible abnormal condition of fissile solution accumulation on the solvent extraction room floor because there were no controls available to prevent a spill of fissile solution from accumulating into an unsafe geometry in the elevator pit (EA–06–179).

F. On August 1, 2005, two security officers willfully failed to conduct a vehicle search, as required by NRC Interim Compensatory Measure Order, Attachment 1. Section B, dated August 21, 2002, and the NFS PPP, Revision 2, Module 6, Access Control Subsystems and Procedures, Subsection 6.2, Access Control at the Owner Controlled Area (EA–06–182).

III

On September 28 and November 30, 2006, the NRC and NFS met in ADR sessions facilitated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process by which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement to resolve their differences regarding a dispute.

During the ADR sessions, the parties discussed the apparent violations and NFS's overall enforcement history. Given the number and repetitive nature of some of the apparent violations, the parties acknowledged that: (1) Past disposition of violations via the enforcement policy had not resulted in NFS's development of corrective actions capable of preventing recurrence of violations; (2) a deficient safety culture at NFS appeared to be a contributor to the recurrence of violations; and (3) a comprehensive, third party review and assessment of the safety culture at NFS represented the best approach for the identification and development of focused, relevant and lasting corrective actions.

With these considerations in mind, the following agreement was reached as documented in this Confirmatory Order:

A. NFS will conduct, via a third-party, an independent safety culture assessment(s) within the parameters described in Section V below.

B. Within 60 days of the date of this Order, NFS will submit, for NRC approval, a request to amend the license to revise the configuration management (CM) program. The amendment request

will include a plan and schedule for implementation of the revised program.

C. The NRC agrees, based on the terms of the agreement, that exercise of Enforcement Discretion is warranted for the EAs listed in Section II.A through F above, and the violations will not be cited.

D. With respect to any potential enforcement action related to securing SNM after the process line shutdown, to the extent the NRC determines that a violation occurred, it will be included in the group of apparent violations for which discretion will be exercised, and the violation will not be cited.

E. The proposed settlement excludes other potential escalated enforcement actions, including those that could result from issues previously identified in inspection reports and issues under review by the NRC's Office of Investigations. However, as part of its deliberations, the NRC will consider the extent to which violations that occur prior to or during implementation of the safety culture assessment, but no longer than 24 months from the date of this Order, are the result of safety culture deficiencies, such that NFS's implementation of the comprehensive safety culture initiative warrants mitigation or other adjustment in any resultant enforcement actions.

On January 9, 2007, the Licensee consented to issuance of this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and the Licensee has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through confirmation of the Licensee's commitments as outlined in this Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 51, 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 70, *it is hereby ordered,* effective immediately, that license no. SNM–124 is modified as follows:

1. For purposes of this agreement, NFS does not dispute the apparent violations listed in Section II above. Within 60 days of the date of this Order, NFS will provide NRC written documentation of the reasons for the violations, the corrective actions taken and planned to prevent recurrence, and the completion dates for each corrective action.

2. The apparent violations associated with EA–06–179 raise concerns about configuration management (CM) that should be within the scope of the safety culture improvement program. Within 60 days of the date of the Order confirming this agreement, NFS will submit, for NRC approval, a request to amend the license to revise the CM management program. The amendment request will include a plan and schedule for implementation of the revised program.

3. NFS will conduct, via a third-party, an independent safety culture assessment(s), which includes nuclear material security, within the following parameters:

a. Within 90 days of the date of the order confirming this agreement, NFS will identify contractor(s) for performing the independent third party safety culture assessment, will submit to NRC the name(s) and qualifications of the contractor(s) specifically, the experience of the contractor(s) in conducting a safety culture assessment, and will submit a plan and schedule for performing the safety culture assessment developed by the independent third party. The assessment shall include the 13 safety culture components discussed in the NRC's Regulatory Issue Summary 2006–013, dated July 31, 2006, and the commitments NFS made at the management meeting with NRC on September 18, 2006. The NRC will inform its review of NFS's submittal using the relevant guidance contained in NRC Inspection Procedure (IP) 95003 specifically, Sections 02.07–02.09, 03.07–03.09, and Enclosures A–F. NFS will not be bound by any specific provision of the NRC guidance document.

b. Within 270 days of the date of this Confirmatory Order, the independent third party will complete its safety culture assessment.

c. Ninety (90) days following completion (i.e., upon the third party's issuance of the report to NFS) of the safety culture assessment, NFS shall provide NRC the third party contractor's report documenting its findings and assessment of the safety culture at NFS and a plan and schedule for implementing assessment recommendations and actions to address identified issues. Upon request by NRC, NFS shall also make available the supporting documentation and data compiled by and/or relied upon by the third party contractor in making its assessment.

d. An acceptable safety culture implementation plan must include performance-based metrics that will be used to measure the success of the program.

e. NFS will conduct an additional third-party safety culture assessment approximately 24 months following the completion (i.e., upon the third party's issuance of the report to NFS) of the initial assessment, and provide the report to the NRC.

The Director, Office of Enforcement, or the Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and to the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person

other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will 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 Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 21st day of February 2007.

Victor M. McCree for William D. Travers,

Regional Administrator.

[FR Doc. 07–3702 Filed 7–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Interest for Participation in U.S. Nuclear Regulatory Commission/Nuclear Energy Institute Working Groups

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of interest in working group participation.

FOR FURTHER INFORMATION CONTACT: James Smith, Project Manager, Technical Support Branch, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, MS EBB2–C40M, Washington, DC 20555–0001. Telephone: (301) 492–3234; fax number: (301) 492–6521; e-mail: *jas4@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) held a public workshop with the Nuclear Energy Institute (NEI) and other stakeholders on June 14, 2007, to discuss certain issues related to implementation of Subpart H of 10 CFR Part 70: (1) Appendix A to Part 70, Reportable safety events, (2) refinement of the definition of uranium solubility under Part 70, 3) use of digital instrumentation and control (I&C) in safety and process settings, (4) § 70.72 Facility changes and change process, and (5) possible revisions to the NRC Enforcement Policy.

Small working groups comprised of NRC and industry representatives, as well as members of the public, will be formed to address four of the five issues. The use of digital I&C in fuel cycle safety and process settings will not be addressed since it is part of a larger NRC/NEI effort involving use of digital I&C in the commercial nuclear industry. The goal of the working groups is to develop regulatory guidance which would ultimately be approved by the NRC.

II. Summary

The purpose of this notice is to provide the public an opportunity to participate as members of the working groups. The number of persons participating in these groups will be limited to one or two; therefore, the first one or two person expressing interest in a particular group will have priority for participation. However, all meetings of these working groups will be open to the public and notice of these meetings will be posted on the NRC Web site. To express interest in participating in one or more of these working groups, please respond to the staff contact listed above by August 20, 2007.

Dated at Rockville, Maryland this 19th day of July 2007.

For the Nuclear Regulatory Commission.

Margie Kotzalas,

Chief, MOX Branch, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. E7–14649 Filed 7–27–07; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Regulatory Commission.

TIME AND DATE: Tuesday, July 31, 2007 at 11:45 a.m.

PLACE: Commission conference room 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agency organization—whether to alter names of the Office of Rates, Analysis and Planning and Office of Public Affairs and Governmental Relations to better reflect functions and responsibilities.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6820.

Dated: Thursday, July 26, 2007.

Garry J. Sikora

Acting Secretary.

[FR Doc. 07–3721 Filed 7–26–07; 12:52 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Extension:

Form N–8F; SEC File No. 270–136; OMB Control No. 3235–0157.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company ceases to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) The investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 3 hours on average to complete. It is estimated that approximately 251 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 753 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a

comprehensive or even a representative survey or study.

Written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 23, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14563 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Assistance, Washington, DC 20549–0213.

Existing Collection; New OMB Control No.: Rule 607; SEC File No. 270–568; OMB Control No. 3235–xxxx.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget ("OMB") for approval.

Rule 607 under Regulation E (17 CFR 230.607) entitled, "Sales material to be filed," requires sales material used in connection with securities offerings under Regulation E (17 CFR 230.601 to 610a) to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.[1] Regulation E allows the exemption of securities issued by a small business investment company ("SBIC") which is registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–1 *et seq.*) or a closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Investment Company Act from registration under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a *et seq.*), so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed $5,000,000 and certain other conditions are met. Commission staff reviews sales material filed under rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed for investor protection.

Respondents to this collection of information include SBICs and BDCs making an offering of securities pursuant to Regulation E. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically. The burden of filing electronically, however, is negligible and there have been no filings made under this rule, so this collection of information does not impose any burden on the industry. The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 23, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14628 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

[1] Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Assistance, Washington, DC 20549–0213.

Extension:
Form S–6; SEC File No. 270–181; OMB Control No. 3235–0184.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Form S–6 (17 CFR 239.16), for Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2 (17 CFR 274.13)." Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"), and to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act").

Form S–6 is used for registration under the Securities Act of the securities of any unit investment trust that is registered under the Investment

Company Act on Form N–8B–2.[1] A separate registration statement under the Securities Act must be filed for each series of units issued by the trust. Form S–6 consists of, among other things, a prospectus, certain written consents, an undertaking to file supplementary information, and certain exhibits containing financial and other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) provides, in pertinent part, that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use. As a result, most unit investment trusts that are registered under the Investment Company Act on Form N–8B–2 update their registration statements on Form S–6 on an annual basis so that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts that are registered under the Investment Company Act on Form N–8B–2 must furnish to investors a prospectus containing pertinent information set forth in the registration statement. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

The Commission estimates that each year unit investment trusts file approximately 1,353 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected unit investment trusts is 47,355 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 23, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14629 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

[1] Form N–8B–2 is the form used by unit investment trusts to register as investment companies under the Investment Company Act (except for unit investment trusts that are insurance company separate accounts issuing variable annuity or variable life insurance contracts, which instead register on Form N–4 and Form N–6, respectively). The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

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.

Existing Collection; New OMB Control No.: Rule 0–4; SEC File No. 270–569; OMB Control No. 3235–xxxx.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget ("OMB") for approval.

Rule 0–4 (17 CFR 275.0–4) under the Investment Advisers Act of 1940 ("Act" or "Advisers Act") (15 U.S.C. 80b–1 *et seq.*) entitled "General Requirements of Papers and Applications," prescribes general instructions for filing an application seeking exemptive relief with the Commission. Rule 0–4 currently requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0–4 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0–4 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0–4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–4 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

The requirements of rule 0–4 are designed to provide Commission staff with the necessary information to assess whether granting the orders of exemption are necessary and appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Act.

Applicants for orders under the Advisers Act can include registered

investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives approximately 9 applications per year submitted under rule 0–4 of the Act. Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on respondents. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required. Based on conversations with applicants and attorneys, the cost ranges from approximately $7,000 for preparing a well-precedented, routine application to approximately $80,000 to prepare a complex or novel application. We estimate that the Commission receives 2 of the most time-consuming applications annually, 4 applications of medium difficulty, and 3 of the least difficult applications subject to rule 0–4. This distribution gives a total estimated annual cost burden to applicants of filing all applications of $355,000 [(2 × $80,000) + (4 × $43,500) + (3 × $7,000)]. The estimates of annual burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The requirements of this collection of information are required to obtain or retain benefits. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 23, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14630 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27909; File No. 812–13346]

MONY Life Insurance Company of America, et al.; Notice of Application

July 24, 2007.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 ("1940 Act"), approving certain substitutions of securities and for an order of exemption pursuant to section 17(b) of the 1940 Act.

APPLICANTS: MONY Life Insurance Company of America ("MLOA"), MONY Life Insurance Company ("MONY"), MONY America Variable Account A ("MLOA Separate Account A"), MONY America Variable Account L ("MLOA Separate Account L") (together, "MLOA Separate Accounts"), MONY Variable Account A ("MONY Separate Account A"), MONY Variable Account L ("MONY Separate Account L") (together, "MONY Separate Accounts"), AXA Equitable Life Insurance Company ("AXA Equitable"), Separate Account A of AXA Equitable ("Separate Account A"), Separate Account FP of AXA Equitable ("Separate Account FP"), Separate Account I of AXA Equitable ("Separate Account I"), Separate Account No. 45 of AXA Equitable ("Separate Account 45"), Separate Account No. 49 of AXA Equitable ("Separate Account 49") and Separate Account No. 301+ of AXA Equitable ("Separate Account 301+") (each, an "AXA Equitable Separate Account" and together, "AXA Equitable Separate Accounts") (collectively, the "Section 26 Applicants"), Separate Account No. 66 of AXA Equitable ("Separate Account 66") and EQ Advisors Trust (the "Trust") (together with the section 26 Applicants, the "section 17 Applicants").

SUMMARY OF APPLICATION: The Section 26 Applicants request an order pursuant to section 26(c) of the 1940 Act, approving the proposed substitution of shares of certain series of the Trust (which is a registered investment company that is an affiliate of the Section 26 Applicants), Franklin Templeton Variable Insurance Products Trust ("Franklin VIT") and Variable Insurance Products Fund II ("Fidelity VIT") (together, Franklin VIT and Fidelity VIT, the "Outside VITs") for shares of other registered investment companies unaffiliated with the section 26 Applicants (the "Substitutions"), each of which is currently used as an underlying investment option for certain variable annuity contracts and/or variable life insurance policies issued by the Insurance Companies ("Contracts").[1] The section 17 Applicants also request an order pursuant to section 17(b) of the 1940 Act exempting them from section 17(a) of the 1940 Act to the extent necessary to permit partly in-kind redemptions of securities issued by certain Removed Portfolios (as defined herein) and purchases of securities issued by certain Replacement Portfolios (as defined herein) (the "In-Kind Transactions") in connection with the Substitutions.

FILING DATE: The application was filed on November 22, 2006, and amended on July 20, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is contained in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 2007, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street,

[1] AXA Equitable, MLOA and MONY are sometimes referred to herein collectively as the "Insurance Companies" and individually as an "Insurance Company." The MLOA Separate Accounts, MONY Separate Accounts and AXA Equitable Separate Accounts are sometimes referred to herein collectively as the "Separate Accounts" and individually as a "Separate Account."

NE., Washington, DC 20549–1090. Applicants, c/o AXA Financial, Inc., 1290 Avenue of the Americas, New York, NY 10104, Attn: Steven M. Joenk, Senior Vice President.

FOR FURTHER INFORMATION CONTACT: Sonny Oh, Staff Attorney, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. MLOA is a stock life insurance company organized in 1969 under the laws of the State of Arizona. The principal office of MLOA is located at 1290 Avenue of the Americas, New York, NY 10104. MLOA is licensed to sell life insurance and annuities in 49 states (not including New York), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. AXA Financial, Inc. ("AXA Financial") is the parent company of MLOA.

2. MONY is a stock life insurance company organized in 1998 under the laws of the State of New York. Prior to 1998, MONY operated as The Mutual Life Insurance Company of New York, a mutual life insurance company. The principal office of MONY is located at 1290 Avenue of the Americas, New York, NY 10104. MONY is licensed to sell life insurance and annuities in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. AXA Financial is the parent company of MONY.

3. AXA Equitable is a New York stock life insurance company that has been in business since 1859 (including the operations of its predecessors). Its home office is located at 1290 Avenue of the Americas, New York, New York 10104. AXA Equitable is authorized to sell life insurance and annuities in all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands. It maintains local offices throughout the United States. AXA Equitable is an investment adviser registered under the Investment Advisers Act of 1940, as amended, and is a wholly owned subsidiary of AXA Financial.

4. MLOA serves as depositor for MLOA Separate Account A and MLOA Separate Account L, which fund certain Contracts. MLOA Separate Account A and MLOA Separate Account L were established under Arizona law in 1987 and 1985, respectively, pursuant to authority granted by MLOA's Board of Directors. Each MLOA Separate Account is a segregated asset account of MLOA and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in the MLOA Separate Accounts under the Contracts are registered under the Securities Act of 1933, as amended ("1933 Act").

5. MONY serves as depositor for MONY Separate Account A and MONY Separate Account L, which fund certain Contracts. MONY Separate Account A and MONY Separate Account L were each established under New York law in 1990 pursuant to authority granted by MONY's Board of Trustees. Each MONY Separate Account is a segregated asset account of MONY and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in the MONY Separate Accounts under the Contracts are registered under the 1933 Act.

6. AXA Equitable serves as sponsor and depositor for Separate Account A, Separate Account I, Separate Account 45, Separate Account 49, Separate Account 301+, Separate Account 66, and Separate Account FP, which fund certain Contracts. Separate Account A, Separate Account I, Separate Account 45, Separate Account 49, Separate Account 301+, and Separate Account 66 were established in 1968, 1996, 1994, 1996, 1981, and 1997, respectively, pursuant to authority granted by AXA Equitable's Board of Directors. Separate Account FP was established in 1995 pursuant to authority granted by the Board of Directors of AXA Equitable in connection with the merger of Equitable Variable Life Insurance Company with and into AXA Equitable. Each AXA Equitable Separate Account is a segregated asset account of AXA Equitable and, except for Separate Account 66, is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account 66 is excluded from registration under the 1940 Act pursuant to section 3(c)(11) of the 1940 Act. Units of interest in each AXA Equitable Separate Account are registered under the 1933 Act.

7. The Trust is organized as a Delaware statutory trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. It commenced operations on May 1, 1997. The Trust is a series investment company and currently offers 65 separate series (each a "Portfolio" and collectively, the "Portfolios"). AXA Equitable currently serves as investment manager ("Manager") of each of the Portfolios. The Trust has received an exemptive order from the Commission ("Multi-Manager Order") that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the Trust, and without the approval of shareholders to appoint, dismiss, or replace investment sub-advisers ("Advisers") and to amend Investment Advisory Agreements ("Advisory Agreements").[2] If a new Adviser is retained for a Portfolio, Contract owners would receive notice of any such action.

8. The Franklin VIT is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. It was organized on April 26, 1988. The Franklin VIT is a series investment company and currently offers 20 separate series. Each Franklin VIT portfolio is managed by an affiliate of Franklin Templeton Investments. The Franklin VIT employs Advisers for certain of its portfolios, but, to the Applicants' knowledge, has not been granted a Multi-Manager Order by the Commission.

9. The Fidelity VIT is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. It was organized on March 21, 1988. The Fidelity VIT is a series investment company and currently offers 6 separate series. Each Fidelity VIT portfolio is managed by Fidelity Management & Research Company. The Fidelity VIT employs Advisers for certain of its portfolios and has received a Multi-Manager Order granted by the Commission.

10. All Contracts allow the Contract owners or, in the case of group annuity Contracts, the participants, to allocate premium payments by Contract owners or contributions by participants among the variable and any fixed investment options available under the Contracts where contributions by Contract owners or premium payments by participants allocated to variable funding options are held in corresponding divisions of the appropriate Separate Accounts.

[2] *See EQ Advisors Trust and EQ Financial Consultants, Inc.*, 1940 Act Rel. Nos. 23093 (March 30, 1998) (notice) and 23128 (April 24, 1998) (order).

11. Each Insurance Company, on its own behalf and on behalf of its Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. In particular, the section 26 Applicants request an order from the SEC pursuant to section 26(c) of the 1940 Act approving the proposed substitutions of shares of the following Replacement Portfolios for shares of the corresponding Removed Portfolios listed opposite their names:

Substitution Number—Removed Portfolios	Replacement Portfolios
1. Old Mutual Insurance Series Fund—Old Mutual Select Value Portfolio.	EQ/AllianceBernstein Value Portfolio (Class IA shares).
2. The Universal Institutional Funds, Inc.—Value Portfolio (Class I shares) ("Universal Value Portfolio").	
3. Premier VIT—OpCap Managed Portfolio	
4. Davis Variable Account Fund, Inc.—Davis Value Portfolio	
5. T. Rowe Price Equity Series, Inc.—T. Rowe Price Equity Income Portfolio.	EQ/Boston Advisors Equity Income Portfolio (Class IA shares).
6. AIM Variable Insurance Funds—AIM V. I. Basic Value Fund (Series I shares).	EQ/BlackRock Basic Value Equity Portfolio (Class IB shares).
7. Dreyfus Variable Investment Fund—Appreciation Portfolio (Initial shares) ("Dreyfus Appreciation Portfolio").	EQ/AllianceBernstein Common Stock Portfolio (Class IA shares).
8. Variable Insurance Products III—VIP Growth Opportunities Portfolio (Initial Class shares and Service Class shares) ("Fidelity Growth Opportunities Portfolio").	EQ/Capital Guardian Research Portfolio (Class IA shares).
9. Premier VIT—OpCap Equity Portfolio	
10. Oppenheimer Variable Account Funds—Oppenheimer Main Street Fund/VA (Service shares)..	
11. AIM Variable Insurance Funds—AIM V. I. Mid Cap Core Equity Fund (Series I shares).	EQ/FI Mid Cap Portfolio (Class IA shares).
12. Alger American Fund—Alger American MidCap Growth Portfolio (Class O shares).	EQ/Van Kampen Mid Cap Growth Portfolio (Class IA shares).
13. MFS Variable Insurance Trust—MFS Mid Cap Growth Series (Initial Class shares)..	
14. Dreyfus Investment Portfolios—Small Cap Stock Index Portfolio (Service shares) ("Dreyfus Small Cap Stock Index Portfolio").	EQ/Small Company Index Portfolio (Class IA shares).
15. Premier VIT—OpCap Small Cap Portfolio	
16. MFS Variable Insurance Trust—MFS New Discovery Series (Initial Class shares).	EQ/AllianceBernstein Small Cap Growth Portfolio (Class IA shares).
17. Janus Aspen Series—Flexible Bond Portfolio (Institutional and Service shares) ("Janus Flexible Bond Portfolio").	EQ/JPMorgan Core Bond Portfolio (Class IA shares).
18. PIMCO Variable Insurance Trust—PIMCO Total Return Portfolio (Administrative shares).	
19. The Universal Institutional Funds, Inc.—Core Plus Fixed Income Portfolio (Class I shares) ("Universal Core Plus Fixed Income Portfolio").	
20. Premier VIT—OpCap Renaissance Portfolio	EQ/Lord Abbett Mid Cap Value Portfolio (Class IA shares).
21. T. Rowe Price Equity Series, Inc.—T. Rowe Price New America Growth Portfolio.	EQ/Capital Guardian Growth Portfolio (Class IA shares).
22. The Universal Institutional Funds, Inc.—U.S. Real Estate Portfolio (Class I and Class II shares) ("Universal U.S. Real Estate Portfolio").	EQ/Van Kampen Real Estate Portfolio (Class IA and Class IB shares).
23. Alger American Fund—Alger American Balanced Portfolio (Class O shares).	Franklin Templeton Variable Insurance Products Trust—Franklin Income Securities Fund (Class 2 shares).
24. MFS Variable Insurance Trust—MFS Total Return Series (Initial Class Shares).	
25. T. Rowe Price Equity Series, Inc.—T. Rowe Price Personal Strategy Balanced Portfolio.	
26. Variable Insurance Products Fund—Growth Portfolio (Initial Class shares and Service Class shares) ("Fidelity Growth Portfolio").	Variable Insurance Products Fund II—Contrafund Portfolio (Initial Class shares and Service Class shares, as applicable) ("Fidelity Contrafund Portfolio").
27. The Universal Institutional Funds, Inc.—Equity Growth Portfolio (Class I shares) ("Universal Equity Growth Portfolio").	

12. The section 26 Applicants propose the Substitutions as part of a continued and overall business plan by each Insurance Company to make its Contracts more attractive to existing Contract owners, participants or prospective purchasers, as the case may be, and more efficient to administer and oversee. Each Insurance Company represents that it has carefully reviewed its Contracts and each investment option offered under its Contracts with the goal of providing a superior choice of investment options.

13. Among the principal purposes of the Substitutions, the section 26 Applicants assert that the Removed Portfolios generally have not attracted sufficient Contract owner or participant interest to support maintaining them as separate investment options under the Contracts, particularly where they duplicate or substantially overlap with other investment options offered through the Separate Accounts. As of December 31, 2006, the Separate Accounts had allocated approximately the following amounts to the Removed and Replacement Portfolios:

Substitution number—Removed portfolios (in millions)	Replacement portfolios (in millions)
1. Old Mutual Select Value Portfolio ($8.0)	EQ/AllianceBernstein Value Portfolio ($4,279.0).
2. Universal Value Portfolio ($13.2).	
3. OpCap Managed Portfolio ($9.9).	
4. Davis Value Portfolio ($1.3).	
5. T. Rowe Price Equity Income Portfolio ($26.8)	EQ/Boston Advisors Equity Income Portfolio ($357.0).
6. AIM V.I. Basic Value Equity Fund ($19.5)	EQ/BlackRock Basic Value Equity Portfolio ($3,600.0).
7. Dreyfus Appreciation Portfolio ($1.0)	EQ/AllianceBernstein Common Stock Portfolio ($9,279.0).
8. Fidelity Growth Opportunities Portfolio ($9.6)	EQ/Capital Guardian Research Portfolio ($1,056.0).
9. OpCap Equity Portfolio ($1.5).	
10. Oppenheimer Main Street Fund/VA ($11.5).	
11. AIM V.I. Mid Cap Core Equity Fund ($9.7)	EQ/FI Mid Cap Portfolio ($1,552.0).
12. Alger American MidCap Growth Portfolio ($37.7)	EQ/Van Kampen Mid Cap Growth Portfolio ($138.0).
13. MFS Mid Cap Growth Series ($6.4).	
14. Dreyfus Small Cap Stock Index Portfolio ($10.3)	EQ/Small Company Index Portfolio ($1,056.0).
15. OpCap Small Cap Portfolio ($1.2).	
16. MFS New Discovery Series ($6.6)	EQ/AllianceBernstein Small Cap Growth Portfolio ($1,201.0).
17. Janus Flexible Bond Portfolio ($23.8)	EQ/JPMorgan Core Bond Portfolio ($1,557.0).
18. PIMCO Total Return Portfolio ($0.6).	
19. Universal Core Plus Fixed Income Portfolio ($14.5).	
20. OpCap Renaissance Portfolio ($20.2)	EQ/Lord Abbett Mid Cap Value Portfolio ($320.0).
21. T. Rowe Price New America Growth Portfolio ($7.3)	EQ/Capital Guardian Growth Portfolio ($402.0).
22. Universal U.S. Real Estate Portfolio (Class I and Class II shares) (Not Provided).	EQ/Van Kampen Real Estate Portfolio (Class IA and Class IB shares) (Not Provided).
23. Alger American Balanced Portfolio ($14.9)	Franklin Income Securities Fund ($39.3).
24. MFS Total Return Series ($30.5).	
25. T. Rowe Price Personal Strategy Balanced Portfolio ($2.7).	
26. Fidelity Growth Portfolio ($38.3)	Fidelity Contrafund Portfolio ($73.2).
27. Universal Equity Growth Portfolio ($0.1).	

14. The section 26 Applicants also maintain that substituting the Replacement Portfolios for the Removed Portfolios would lead to greater efficiencies in administering the Contracts and potentially enable the Insurance Companies to offer a wider range of investment options in the future that would be more attractive to Contract owners and participants. In this connection, the section 26 Applicants note that the deletion of unpopular investment options would create additional capacity on their systems and platforms to offer new investment options.

15. The section 26 Applicants further assert that the Substitutions also are designed and intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through the Separate Accounts. In certain cases, the Insurance Companies offer several investment alternatives that overlap one another by having similar investment objectives, policies and risks. The proposed Substitutions would eliminate these overlapping investment alternatives. The section 26 Applicants believe that the deletion of overlapping investment options should not adversely affect Contract owners and participants given that other similar investment options will remain available under the Contracts and that the Contracts will either offer the same number of investment options or, in those cases where the number of investment options is being reduced, continue to offer a significant number of alternative investment options (currently expected to range in number from 27 to 51 after the Substitutions versus 28 to 57 before the Substitutions).

16. In addition, some Contracts offer investment alternatives from multiple fund complexes, each with its own prospectus and disclosure format, which significantly increases the volume and complexity of information that is received by Contract owners and participants. The Insurance Companies believe that this situation may be confusing to Contract owners and participants. By substituting the Replacement Portfolios for the Removed Portfolios, the respective Insurance Company anticipates that it would simplify the Contract prospectuses and related materials provided to Contract owners and participants and thereby reduce the potential for Contract owner and participant confusion. The section 26 Applicants also assert that the Substitutions will enable an Insurance Company to reduce certain costs that it incurs in administering the Contracts by removing overlapping and unpopular Portfolios and thereby allowing an Insurance Company to offer more competitively priced products in the future.

17. The section 26 Applicants note that Contract owners and participants with subaccount balances invested in shares of the Replacement Portfolios will have the same or lower net operating expenses immediately after the Substitutions. In addition, the Insurance Companies have agreed to impose certain expense limits on Replacement Portfolios to ensure that Contract owners and participants on the Substitution Date incur the same or lower expense ratios for certain periods after the Substitutions. In addition, many of the Replacement Portfolios are larger than their corresponding Removed Portfolios. Generally speaking, larger funds tend to have lower expenses than comparable funds that are smaller. This is because, with a larger asset size, fixed fund expenses are spread over a larger base, lowering the expense ratios. Therefore, as a result of certain Substitutions, various costs such as legal, accounting, printing and trustee fees will be spread over a larger base with each Contract owner and participant bearing a smaller portion of the cost than would be the case if the Replacement Portfolios and/or the Trust (as applicable) were smaller in size. Larger funds also may have lower trading expenses, potentially resulting in higher returns.

18. The section 26 Applicants also argue that certain of the proposed Substitutions would replace an outside Portfolio with a Portfolio for which AXA Equitable serves as Manager and, thus, would permit AXA Equitable,

under the Multi-Manager Order, to appoint, dismiss and replace Advisers and amend Advisory Agreements as necessary to seek optimal performance from the Portfolio and its portfolio managers. Notwithstanding the Multi-Manager Order, with respect to the Substitution involving the EQ/Van Kampen Real Estate Portfolio, after the Substitution Date (as defined herein), the Section 26 Applicants agree not to change the Adviser to the EQ/Van Kampen Real Estate Portfolio without first obtaining shareholder approval of either (a) the Adviser change or (b) AXA Equitable's continued ability to rely on the Multi-Manager Order. Even with respect to this Substitution, the section 26 Applicants believe that the Substitution would provide AXA Equitable, as the investment manager of the Trust, with greater oversight capabilities with respect to portfolios offered through its Contracts.

19. Moreover, certain of the Substitutions will replace an outside Portfolio with a Portfolio that is managed by AXA Equitable. In this regard, the relevant Replacement Portfolios generally are only available through the variable insurance and annuity products offered by AXA Equitable and its affiliates. Consequently, the Board of Trustees of the relevant Replacement Portfolios has greater sensitivity to the needs of Contract owners and participants. The relevant Substitutions also will provide AXA Equitable with more influence over the administrative aspects of the Portfolios, while providing Contract owners and participants with the benefit of third party asset management. Influence is important because changes to Removed Portfolios can result in costly, off-cycle communications and mailings to Contract owners and participants. Conversely, for the relevant Replacement Portfolios, AXA Equitable has greater influence over the pace and timing of such changes. AXA Equitable believes that the relevant Substitutions will enable it to exercise more influence over the management and administration of the Portfolios, thereby reducing costs and customer confusion. The added influence will give AXA Equitable the ability to react more quickly to changes and problems it encounters in its oversight of the relevant Replacement Portfolios.

20. The section 26 Applicants also maintain that the Substitutions will substitute shares of a Replacement Portfolio for shares of a Removed Portfolio, which has very similar, and in some cases substantially similar, investment objectives, investment policies and risks as those of the corresponding Removed Portfolio. This fact is expected to simplify the process of explaining the Substitutions to Contract owners and participants, including an explanation of the relevant differences in the policies of the Replacement and Removed Portfolios, and should facilitate their understanding of the effect of the Substitutions on them. A summary description of the investment objectives, investment policies and principal risks of each Removed Portfolio and its corresponding proposed Replacement Portfolio is set forth below.

Substitution Number—Removed Portfolios				Replacement Portfolio
1. Old Mutual Select Value Portfolio	2. Universal Value Portfolio (Class I shares)	3. OpCap Managed Portfolio	4. Davis Value Portfolio	EQ/AllianceBernstein Value Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks to provide investors with long-term growth of capital and income; current income is a secondary objective. The Portfolio normally invests at least 65% of its net assets in equity securities of large cap companies with value characteristics. The Portfolio may invest in common and preferred stock. The Portfolio also may invest in investment grade fixed income securities, American Depositary Receipts ("ADRs") and up to 20% of its net assets in foreign-traded securities. In addition, the Portfolio may invest in derivatives, U.S. government securities and convertible securities.	*Investment Objective and Principal Strategies:* The Portfolio seeks above-average total return over a market cycle of three to five years. The Portfolio invests primarily in common stocks of companies with larger capitalizations. The Portfolio emphasizes a value style of investing seeking well established companies that appear undervalued. The Portfolio also may invest, to a limited extent, in foreign equity securities and, without limit, in securities of foreign companies listed on a U.S. national exchange. In addition, the Portfolio may invest in investment grade debt securities, U.S. government securities, convertible securities and derivatives.	*Investment Objective and Principal Strategies:* The Portfolio seeks growth of capital over time. The Portfolio invests in common stocks, bonds, derivatives and cash equivalents in varying percentages based on the advisers' views of relative values. The Portfolio also may invest in foreign securities and government and corporate bonds. The Portfolio may invest up to 100% of its assets in debt securities, but will only do so if, in the judgment of the adviser, equity securities are not attractive investments.	*Investment Objective and Principal Strategies:* The Portfolio seeks long-term growth of capital. The Portfolio invests the majority of its assets in equity securities issued by large companies. The Portfolio may invest in companies of any size and also may invest in foreign securities, debt securities, including government securities, and derivatives. In addition, the Portfolio may invest in preferred securities and convertible securities. The adviser seeks to acquire companies with durable business models that can be purchased at attractive valuations in relation to their intrinsic value.	*Investment Objective and Principal Strategies:* The Portfolio seeks capital appreciation. Under normal circumstances, the Portfolio invests a least 80% of its total assets in equity securities that are trading at a discount to their long term earnings power. The Portfolio generally invests in large-cap companies. The Portfolio may invest in common stock, preferred stock and securities convertible into common stock. The Portfolio also may invest up to 20% of its assets in U.S. Government securities and investment grade securities of domestic corporations and up to 10% of its assets in foreign equity or debt securities. In addition, the Portfolio may invest in derivatives.

Substitution Number—Removed Portfolios				Replacement Portfolio
1. Old Mutual Select Value Portfolio	2. Universal Value Portfolio (Class I shares)	3. OpCap Managed Portfolio	4. Davis Value Portfolio	EQ/AllianceBernstein Value Portfolio (Class IA shares)
Principal Risks: Equity Risk, Industry and Sector Risk, Investment Style Risk, Market Risk, Security Risk, Security Selection Risk.	*Principal Risks:* Asset Class Risk, Equity Risk, Market Risk, Security Risk, Small-Cap Company Risk, Value Investing Risk.	*Principal Risks:* Asset Allocation Risk, Credit Risk, Currency Risk, Derivatives Risk, Emerging Markets Risk, Fixed Income Risk, Issuer Risk, Leveraging Risk, Liquidity Risk, Management Risk, Market Risk, Mortgage Risk, Value Securities Risk.	*Principal Risks:* Company Risk, Financial Service Risk, Foreign Country Risk, Headline Risk, Market Risk, Selection Risk.	*Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Derivatives Risk, Equity Risk, Fixed Income Risk, Foreign Securities Risk (also known as currency risk and emerging markets risk, or foreign country risk), Investment Grade Securities Risk, Interest Rate Risk, Leveraging Risk, Market Risk, Security Selection Risk (also known as selection risk), Security Risk (also known as issuer risk or company risk), Value Investing Risk (also known as investment style risk or value securities risk).

Substitution Number—Removed Portfolios	Replacement Portfolio
5. T. Rowe Price Equity Income Portfolio	EQ/Boston Advisors Equity Income Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks to provide substantial dividend income as well as long-term growth of capital. The Portfolio will normally invest at least 80% of its net assets in common stocks, with 65% in common stocks of well-established companies paying above average dividends. The Portfolio also may invest in convertible securities, foreign securities and derivatives. The Portfolio typically employs a value approach in selecting investments. *Principal Risks:* Derivatives Risk, Equity Risk, Fixed Income Risk, Foreign Securities Risk, Interest Rate Risk, Market Risk, Security Risk, Security Selection Risk, Value Investing Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks a combination of growth and income to achieve an above-average and consistent total return. Under normal circumstances, the Portfolio invests as least 80% of its net assets, plus borrowings for investment purposes, in equity securities. The Portfolio primarily invests in dividend-paying common stocks of U.S. large capitalization companies, but also may invest in small- and mid-cap companies. The Portfolio also may invest in convertible securities, foreign securities and derivatives. The Adviser focuses primarily on companies that offer the potential for capital appreciation combined with an above market level of dividend income. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Equity Risk, Market Risk, Security Risk, Security Selection Risk, Small-Cap and Mid-Cap Company Risk.

Substitution Number—Removed Portfolio	Replacement Portfolio
6. AIM V.I. Basic Value Fund (Series I shares)	EQ/BlackRock Basic Value Equity Portfolio (Class IB shares)
Investment Objective and Principal Strategies: The Portfolio seeks long-term growth of capital. The Portfolio normally invests at least 65% of its total assets in equity securities of large- and mid-cap U.S. issuers and that the portfolio managers believe to be undervalued in relation to long-term earning power or other factors. The Portfolio also may invest up to 30% of its total assets in equity securities of small-cap U.S. issuers and may invest in investment grade non-convertible debt securities, U.S. government securities and high-quality money market issuers, all of which are issued by U.S. issuers. In addition, the Portfolio may invest up to 25% of its total assets in foreign securities. *Principal Risks:* Equity Risk, Foreign Securities Risk, Market Risk, Security Risk, Security Selection Risk, Small-Cap Company Risk, Value Investing Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks capital appreciation and, secondarily, income. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities. The Portfolio invests primarily in equity securities the Adviser believes are undervalued. The Portfolio focuses its investments on large-cap companies, but also may invest in small- and mid-capitalization companies. The Portfolio also may invest, to a limited extent, in investment grade debt securities and U.S. government securities and up to 25% of its total assets in foreign securities. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Derivatives Risk, Equity Risk, Foreign Securities Risk, Market Risk, Security Selection Risk, Security Risk, Small-Cap and Mid-Cap Company Risk, Value Investing Risk.

Substitution Number—Removed Portfolio	Replacement Portfolio
7. Dreyfus Appreciation Portfolio (Initial shares)	EQ/AllianceBernstein Common Stock Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks long-term capital growth consistent with preservation of capital. The Portfolio normally invests at least 80% of its assets in common stocks. The Portfolio focuses on blue chip companies, including multinational companies. The adviser may utilize both growth and value investing styles. *Principal Risks:* Blue Chip Risk, Foreign Investment Risk, Issuer Risk, Market Risk, Market Sector Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks to achieve long-term growth of capital. The Portfolio generally invests at least 80% of its net assets, plus borrowing for investment purposes, in common stocks. The Portfolio invests primarily in common stocks listed on national securities exchanges, but smaller amounts may be invested in stocks that are traded over-the-counter. The Portfolio generally will not invest more than 20% of its total assets in foreign securities. The adviser may utilize both growth and value investing styles. *Principal Risks:* Adviser Selection Risk, Asset Class Risk (also known as market risk or market sector risk), Convertible Securities Risk, Equity Risk (also known as issuer risk), Foreign Securities Risk (also known as foreign investment risk), Growth Investing Risk, Market Risk, Security Risk (also known as issuer risk), Security Selection Risk, Small-Cap and Mid-Cap Company Risk, Value Investing Risk.

Substitution Number—Removed Portfolios			Replacement Portfolio
8. Fidelity Growth Opportunities Portfolio (Initial Class shares and Service Class shares)	9. OpCap Equity Portfolio	10. Oppenheimer Main Street Fund/VA (Service shares)	EQ/Capital Guardian Research Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks to provide capital growth. The Portfolio normally invests primarily in common stocks. The Portfolio may invest in securities of foreign issuers in addition to domestic issuers. The adviser is not constrained by any particular investment style and may utilize both growth and value investing styles. *Principal Risks:* Foreign Exposure Risk, Issuer-Specific Changes, Stock Market Volatility Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks long term capital appreciation. Under normal conditions, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies that the manager believes are undervalued in the marketplace. The Portfolio may invest in foreign securities and invests in equity securities listed on U.S. or foreign securities exchanges or traded in over-the-counter markets. *Principal Risks:* Credit Risk, Equity Risk, Issuer Risk, Leveraging Risk, Liquidity Risk, Management Risk, Market Risk, Value Securities Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks high total return from equity and debt securities. The Portfolio currently invests mainly in common stocks of U.S. companies of different capitalization ranges, presently focusing on large-capitalization issuers. The Portfolio may also buy debt securities such as bonds and debentures, but does not currently emphasize these investments. In addition, the Portfolio may invest in foreign securities without limit, however, the Portfolio does not currently expect to have substantial investments in such securities. *Principal Risks:* Asset Class Risk, Equity Risk, Fixed Income Risk, Interest Rate Risk, Market Risk, Security Risk, Security Selection Risk, Small-Cap and Mid-Cap Company Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks to achieve long-term growth of capital. The Portfolio invests primarily (generally at least 65% of its assets) in equity securities of U.S issuers and securities whose principal markets are in the United States. The Portfolio invests primarily in common stocks of large-cap companies. The Portfolio may invest up to 15% of its total assets in securities of issuers outside of the U.S. and not included in the S&P 500. The Adviser seeks to invest in stocks whose prices are not excessive relative to book value or in companies whose asset values are understated. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Equity Risk (also known as issuer-specific changes risk), Foreign Securities Risk (also known as foreign exposure risk), Market Risk (also known as stock-market volatility risk), Security Selection Risk (also known as management risk), Security Risk (also known as issuer-specific changes risk or issuer risk), Small-Cap and Mid-Cap Company Risk.

Substitution Number—Removed Portfolio	Replacement Portfolio
11. AIM V.I. Mid Cap Core Equity Fund (Series I shares)	EQ/FI Mid Cap Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks long-term growth of capital. Normally, the Portfolio invests at least 80% of its net assets, plus the amount of any borrowing for investment purposes, in equity securities, including convertible securities, of mid-capitalization companies. In selecting investments, the adviser seeks to identify those companies that are, in its view, undervalued relative to current or projected earnings. The Portfolio may invest up to 20% of its assets in equity securities of companies in other market capitalization ranges. The Portfolio may also invest up to 20% of its assets in investment grade debt securities, U.S. Government securities and high quality money market instruments and 25% of its total assets in foreign securities. In addition, the Portfolio may invest in derivatives. *Principal Risks:* Equity Risk, Foreign Securities Risk, Market Risk, Security Risk, Security Selection Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks long-term growth of capital. The Portfolio normally invests at least 80% of its net assets, plus any borrowings for investment purposes, in common stocks of companies with medium market capitalizations. The Portfolio may also invest in companies with smaller or larger market capitalization and securities of foreign issuers. The Portfolio is not constrained by any particular investment style and may buy growth-oriented or value-oriented stock or a combination of both. While the Portfolio does not have a stated limit with respect to investments in securities of foreign issuers, from January 1, 2004 through December 31, 2006, the Portfolio generally has invested between 10–20% of its net assets in such securities. In addition, the Portfolio may invest in derivatives and up to 20% of its net assets in investment grade debt securities and U.S. Government securities. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Derivatives Risk, Equity Risk, Foreign Securities Risk, Growth Investing Risk, Market Risk, Portfolio Turnover Risk, Security Risk, Security Selection Risk, Small-Cap and Mid-Cap Company Risk, Value Investing Risk.

Substitution Number—Removed Portfolios		Replacement Portfolio
12. Alger American MidCap Growth Portfolio (Class O shares)	13. MFS Mid Cap Growth Series (Initial Class shares)	EQ/Van Kampen Mid Cap Growth Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks long-term capital appreciation. Under normal circumstances, the portfolio invests at least 80% of its net assets in the equity securities of mid-cap companies at the time of investment. The Portfolio also may invest in equity securities of small- and large-cap companies. The Portfolio focuses on mid-sized companies the adviser believes demonstrate promising growth potential. The Portfolio may invest in derivatives, convertible securities and up to 20% of its total assets in foreign securities. *Principal Risks:* Derivatives Risk, Equity Risk, Growth Investing Risk, Liquidity Risk, Market Risk, Mid-Cap Company Risk, Security Risk, Security Selection Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks long-term growth of capital. Under normal circumstances, the Portfolio invests at least 80% of its net assets in common stocks and related securities, of companies with medium market capitalization which the Portfolio's adviser believes have above-average growth potential. The Portfolio also may invest, to a limited extent, in investment grade debt securities, up to 10% in lower rated bonds and up to 20% in foreign securities, including emerging markets securities. In addition, the Portfolio may invest in convertible securities and derivatives. *Principal Risks:* Emerging Markets Risk, Foreign Securities Risk, Market Risk, Mid-Cap Growth Company Risk, Over-the-Counter Risk, Short Sales Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks capital growth. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in securities of medium-sized companies at the time of investment. The Portfolio primarily invests (generally at least 65% of its assets) in equity securities and may also invest in equity securities of small- and large-cap companies. The Adviser seeks to invest in high quality companies it believes have sustainable competitive advantages and the ability to redeploy capital at high rates of return. The Portfolio also may invest in debt securities of various maturities considered investment grade and up to 5% of its net assets in convertible securities below investment grade. In addition, the Portfolio may invest in derivatives and up to 25% of its total assets in foreign issuers, including issuers in emerging markets. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Currency Risk, Derivatives Risk, Emerging Markets Risk, Equity Risk, Foreign Securities Risk, Fixed Income Risk, Investment Grade Securities risk, Junk Bond or Lower Rated Securities Risk, Growth Investing Risk (also known as mid-cap growth company risk), Market Risk, Security Risk, Security Selection Risk, Small-Cap and Mid-Cap Company Risk (also known as mid-cap growth company risk).

Substitution Number—Removed Portfolios		Replacement Portfolio
14. Dreyfus Small Cap Stock Index Portfolio (Service shares)	15. OpCap Small Cap Portfolio	EQ/Small Company Index Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks to match the performance of the S&P SmallCap 600 Index. The Portfolio invests in a representative sample of stocks included in the S&P SmallCap 600 Index. The Portfolio may also invest in derivatives and, to a limited extent, in short-term debt securities. *Principal Risks:* Derivatives Risk, Indexing Strategy Risk, Issuer Risk, Market Risk, Small and Midsize Company Risk	*Investment Objective and Principal Strategies:* The Portfolio seeks capital appreciation. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of small-cap companies that the adviser believes are undervalued in the marketplace. The Portfolio's benchmark is the Russell 2000 Index ("Russell 2000"). The Portfolio also may invest in securities issued in an IPO, foreign securities, derivatives and, to a limited extent, in short-term debt securities. *Principal Risks:* Credit Risk, Issuer Risk, Leveraging Risk, Liquidity Risk, Management Risk, Market Risk, Small Company Risk, Value Securities Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks to replicate as closely as possible the total return of the Russell 2000. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowing for investment purposes, in equity securities of small-cap companies included in the Russell 2000. The Portfolio may also invest in derivatives and, to a limited extent, in short-term debt securities. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Derivatives Risk, Equity Risk, Index-Fund Risk (also known as indexing strategy risk), Liquidity Risk, Market Risk (also known as issuer risk), Security Risk (also known as issuer risk), Small-Cap Company Risk (also known as small company risk).

Substitution Number—Removed Portfolios	Replacement Portfolio
16. MFS New Discovery Series (Initial Class shares)	EQ/AllianceBernstein Small Cap Growth Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks capital appreciation. Under normal market conditions, the Portfolio invests at least 65% of its net assets in equity securities of emerging growth companies. While emerging growth companies may be of any size, the Portfolio generally focuses on small capitalization companies. The Portfolio invests in common stocks and other equity securities, such as convertible securities. The adviser looks to invest in companies that offer superior growth prospects. The Portfolio also may invest in investment grade corporate fixed income securities and up to 20% of its assets in foreign securities *Principal Risks:* Active and Frequent Trading Risk, Company Risk, Emerging Growth Companies Risk, Foreign Securities Risk, Market Risk, Over-the-Counter Risk, Small Capitalization Companies Risk, Short Sales Risk	*Investment Objective and Principal Strategies:* The Portfolio seeks to achieve long-term growth of capital. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowing for investment purposes, in securities of small capitalization companies. The Portfolio invests primarily in U.S. common stocks and other equity-type securities issued by smaller companies with favorable growth prospects. The Portfolio may also invest in convertible securities, investment grade corporate fixed income securities and up to 20% of its assets in foreign securities. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Equity Risk, Growth Investing Risk, Liquidity Risk, Market Risk, Portfolio Turnover Risk (also known as active and frequent trading risk), Securities Risk (also known as company risk), Security Selection Risk, Small-Cap Company Risk (also known as small capitalization companies risk).

Substitution Number—Removed Portfolios			Replacement Portfolio
17. Janus Flexible Bond Portfolio (Institutional and Service shares)	18. PIMCO Total Return Portfolio (Administrative shares)	19. Universal Core Plus Fixed Income Portfolio (Class I shares)	EQ/JPMorgan Core Bond Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks to obtain maximum total return, consistent with preservation of capital. Under normal circumstances, the Portfolio invests at least 80% of its assets, plus the amount of any borrowings for investment purposes, in bonds. The Portfolio will invest at least 65% of its assets in investment grade debt securities. The types of bonds the Portfolio invests in include government bonds, corporate bonds and mortgage-backed bonds. Within the parameters of its specific investment policies, the Portfolio also may invest, without limit, in foreign debt and equity securities. In addition, the Portfolio may invest in derivatives. *Principal Risks:* Credit Risk, Fixed Income Risk, Foreign Securities Risk, Interest Rate Risk High-Yield Securities Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks maximum total return, consistent with preservation of capital and prudent investment management. Under normal circumstances, the Portfolio invests at least 65% of its total assets in a diversified portfolio of fixed income instruments of varying maturities. The Portfolio invests primarily in investment grade debt securities. The Portfolio may invest up to 30% of its total assets in securities denominated in foreign currencies, and may invest beyond this limit in U.S. dollar-denominated securities of foreign issuers. The Portfolio may also invest in derivatives. *Principal Risks:* Credit Risk, Currency Risk, Derivatives Risk, Foreign (Non-U.S.) Investment Risk, High Yield Risk, Interest Rate Risk, Issuer Risk, Leveraging Risk, Liquidity Risk, Management Risk, Market Risk, Mortgage Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks above average total return over a market cycle of three to five years. Under normal circumstances, at least 80% of the Portfolio's assets are invested in fixed income securities. The Portfolio invests primarily in a diversified mix of dollar denominated investment grade fixed income securities, including U.S. government, corporate and mortgage securities. The Portfolio also may invest in foreign securities and derivatives. *Principal Risks:* Credit Risk, Fixed Income Risk, High-Yield Securities Risk, Interest Rate Risk, Market Risk, Mortgage-Backed Securities Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks to provide a high total return consistent with moderate risk to capital and maintenance of liquidity. Under normal circumstances, the Portfolio invest at least 80% of its net assets, plus borrowings for investment purposes, in investment grade debt securities. The Portfolio invests in broad sectors of fixed income securities, including U.S. Government and agency securities, corporate securities and mortgage-backed securities. The Portfolio also may invest in derivatives and up to 25% of its assets in securities of foreign issuers. *Principal Risks:* Adviser Selection Risk, Asset-Backed Securities Risk, Asset Class Risk, Credit Risk, Derivatives Risk, Fixed Income Risk, Foreign Securities Risk, Interest Rate Risk, Investment Grade Securities Risk, Liquidity Risk, Market Risk, Mortgage-Backed Securities Risk, Portfolio Turnover Risk, Security Risk, Security Selection Risk.

Substitution Number—Removed Portfolio	Replacement Portfolio
20. OpCap Renaissance Portfolio	EQ/Lord Abbett Mid Cap Value Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks long term capital appreciation and income. Under normal market conditions, the Portfolio invests at least 65% of its assets in common stocks of companies that the adviser believes are trading below their intrinsic values and whose business fundamentals are expected to improve. The Portfolio typically invests in mid-cap companies. The Portfolio also may invest in derivatives and up to 15% in foreign securities, except that the Portfolio may invest without limit in securities of foreign issuers that are traded in U.S. markets, including ADRs). *Principal Risks:* Credit Risk Derivatives Risk Issuer Risk, Leveraging Risk, Liquidity Risk, Management Risk, Market Risk, Value Securities Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks capital appreciation. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of mid-sized companies. In selecting investments, the Adviser uses a value approach. The Portfolio also may invest up to 10% of its net assets in foreign securities, except that the Portfolio may invest without limit in ADRs and similar depositary receipts. In addition, the Portfolio may invest in derivatives. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Derivatives Risk, Equity Risk (also known as issuer risk), Futures and Options Risk, Market Risk, Mid-Cap Company Risk, Security Risk (also known as issuer risk), Security Selection Risk (also known as management risk), Value Investing Risk (also known as value securities risk).

Substitution Number—Removed Portfolio	Replacement Portfolio
21. T. Rowe Price New America Growth Portfolio	EQ/Capital Guardian Growth Portfolio (Class IA shares)
Investment Objective and Principal Strategies: The Portfolio seeks long-term capital growth. The Portfolio invests at least 65% of its total assets in common stocks of U.S. companies operating in those sectors of the economy that the adviser believes are the fastest growing or have the greatest growth potential. The Portfolio may invest in companies of any market capitalization and may also invest in convertible securities and foreign securities. *Principal Risks:* Asset Class Risk, Equity Risk, Foreign Securities Risk, Growth Investing Risk, Market Risk, Security Risk, Security Selection Risk, Small-Cap Company Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks long-term growth of capital. The Portfolio normally will be invested primarily in common stocks, or securities convertible or exchangeable into common stocks, of large-cap companies. The Portfolio invests primarily in equity securities of U.S. issuers and securities whose principal markets are in the U.S., including ADRs. The Adviser seeks to invest in securities that exhibit one or more growth characteristics relative to the U.S. market. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Equity Risk, Foreign Securities Risk, Growth Investing Risk, Market Risk, Security Selection Risk, Security Risk, Small-Cap and Mid-Cap Company Risk.

Substitution Number—Removed Portfolio	Replacement Portfolio
22. Universal U.S. Real Estate Portfolio (Class I and Class II shares)	EQ/Van Kampen Real Estate Portfolio (Class IA and Class IB shares)
Investment Objective and Principal Strategies: The Portfolio seeks to provide above average current income and long-term capital appreciation by investing primarily in equity securities of companies in the U.S. real estate industry, including real estate investment trusts ("REITs"). Under normal circumstances, at least 80% of the Portfolio's assets will be invested in equity securities of companies in the U.S. real estate industry. The Portfolio also has the flexibility to invest up to 20% of its net assets in foreign securities. The Portfolio focuses on REITs as well as real estate operating companies that invest in a variety of property types and regions. The adviser's approach emphasizes bottom-up stock selection with a top-down asset allocation overlay. *Principal Risks:* Equity Risk, Focused Portfolio Risk, Market Risk, Non-Diversification Risk, Real Estate Risk, Security Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks to provide above average current income and long-term capital appreciation. Under normal circumstances, the Portfolio will invest at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies in the real estate industry, including REITs. The Portfolio also may invest in foreign securities. The Portfolio focuses on REITs, as well as real estate operating companies that invest in a variety of property types and regions. The Adviser's approach emphasizes bottom-up stock selection with a top-down asset allocation overlay. *Principal Risks:* Adviser Selection Risk, Asset Class Risk, Convertible Securities Risk, Derivatives Risk, Equity Risk, Focused Portfolio Risk, Foreign Securities Risk, Market Risk, Non-Diversification Risk, Real Estate Investing Risk (also known as real estate risk), Security Risk, Security Selection Risk, Value Investing Risk.

Substitution Number—Removed Portfolios			Replacement Portfolio
23. Alger American Balanced Portfolio (Class O shares)	24. MFS Total Return Series (Initial Class shares)	25. T. Rowe Price Personal Strategy Balanced Portfolio	Franklin Income Securities Fund (Class 2 shares)
Investment Objective and Principal Strategies: The Portfolio seeks current income and long-term capital appreciation. Under normal circumstances, the Portfolio invests at least 25% of its net assets in fixed-income securities and at least 25% of its net assets in equity securities. Most of the Portfolio's fixed income investments are concentrated in investment grade securities. The Portfolio may also invest up to 10% of its net assets in lower-rated securities. In addition, the Portfolio invests primarily in growth stocks. The Portfolio may also invest in derivatives, convertible securities and up to 20% of its assets in foreign securities. *Principal Risks:* Credit Risk, Derivatives Risk, Fixed Income Securities Risk, Growth Stock Risk, Interest Rate Risk, Lower Rate Securities Risk, Market Risk, Mortgage-Backed and Asset-Backed Securities Risk, Stock Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks above-average income consistent with prudent employment of capital. Under normal market conditions, the Portfolio invests at least 40% of its net assets in common stocks and related securities and at least 25% of its net assets in non-convertible fixed income securities. The Portfolio may invest up to 20% of its assets in lower rated debt securities and up to 20% of its assets in foreign securities. In addition, the Portfolio may invest in convertible securities and derivatives. *Principal Risks:* Allocation Risk, Convertible Securities Risk, Credit Risk, Foreign Securities Risk, Interest Rate Risk, Junk Bond Risk, Liquidity Risk, Market Risk, Maturity Risk, Mortgage-Backed and Asset-Backed Securities Risk, Undervalued Securities Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks the highest total return over time consistent with an emphasis on both capital appreciation and income. The Portfolio invests in a diversified portfolio typically consisting of approximately 60% stocks, 30% bonds and 10% money market instruments. The Portfolio also invests at least 25% of its total assets in senior fixed-income securities. In addition, the Portfolio invests in both growth and value stocks. The Portfolio also may invest in lower rated debt securities, foreign securities and derivatives. *Principal Risks:* Bond Risk, Credit Risk, Derivatives Risk, Foreign Securities Risk, Interest Rate Risk, Stock Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks to maximize income while maintaining prospects for capital appreciation. Under normal market conditions, the Portfolio invests in both debt and equity securities. The Portfolio may invest a significant amount of its total assets in debt securities that are either rated below investment grade, or if unrated, determined to be of comparable quality by the Portfolio's adviser (also known as junk bonds). The Portfolio may also invest in convertible securities. The adviser seeks to invest in undervalued or out-of-favor securities it believes offer opportunities for income today and growth tomorrow. In addition, the Portfolio may invest in derivatives and a small portion of its assets in foreign securities. *Principal Risks:* Convertible Securities Risk, Credit Risk, Foreign Securities Risk, Income Risk, Interest Rate Risk, Stocks Risk, Value Style Investing Risk.

Substitution Number—Removed Portfolios	Replacement Portfolio	
	26. Fidelity Growth Portfolio (Initial Class shares and Service Class shares)	27. Universal Equity Growth Portfolio (Class I shares)
Investment Objective and Principal Strategies: The Portfolio seeks capital appreciation. The Portfolio normally invests primarily in common stocks. The adviser invests the Portfolio's assets in companies it believes have above-average growth potential. The Portfolio may invest up to 50% of its assets in foreign securities. The Portfolio may also invest in derivatives. *Principal Risks:* Foreign Exposure Risk, Issuer-Specific Risk, Growth Investing Risk, Stock Market Volatility Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks long-term capital appreciation. Under normal circumstances, at least 80% of the Portfolio's assets will be invested in equity securities. The Portfolio invests primarily in growth-oriented equity securities of U.S. and foreign companies. The Portfolio invests primarily in large-cap companies. The Portfolio may also invest up to 25% of its assets in foreign securities and may invest in derivatives. *Principal Risks:* Equity Risk, Foreign Securities Risk, Market Risk, Security Risk.	*Investment Objective and Principal Strategies:* The Portfolio seeks long-term capital appreciation. The Portfolio normally invests primarily in common stocks. The Portfolio may invest in growth or value stocks or a combination of both. The Portfolio also may invest in foreign securities and derivatives. *Principal Risks:* Foreign Exposure Risk (also known as foreign securities risk), Issuer Specific Changes Risk (also known as security risk), Stock Market Volatility Risk (also known as equity risk and market risk).

21. The section 26 Applicants also contend that the Substitutions are designed to provide Contract owners and participants with an opportunity to continue their investment in similar Portfolios without interruption and without any cost to them. In this regard, the Insurance Companies have agreed to bear all expenses incurred in connection with the Substitutions and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitutions, the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitutions. In addition, the section 26 Applicants represent that the net expense ratios of the Replacement Portfolios are expected to be the same as or lower than those of the Removed Portfolios. A summary comparison of the fees and expenses, and asset size of the Portfolios involved in the Substitutions for fiscal year ended December 31, 2006, is set forth below.

1. Old Mutual Select Value Portfolio Replaced by EQ/AllianceBernstein Value Portfolio (Class IA Shares)

As provided in the chart below, the Section 26 Applicants anticipate that the EQ/AllianceBernstein Value Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Old Mutual Select Value Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit Contract owners and participants by lowering the annual operating expense ratio.

	Old Mutual Select Value Portfolio (percent)	EQ/AllianceBernstein Value Portfolio (percent)
Management Fee[3]	0.75	0.60
Rule 12b–1 Fee	None	None
Other Expenses	0.21	0.13
Total Annual Operating Expenses	0.96	[4] 0.73
Less Fee Waiver/Expense Reimbursement[5]	(0.02)	(0.03)
Net Annual Operating Expenses	0.94	0.70

[3] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.75% on less than $300 million; 0.70% on $300 million to less than $500 million; 0.65% on $500 million to less than $750 million; 0.60% on $750 million to less than $1.0 billion; 0.55% on $1.0 billion to less than $1.5 billion; 0.50% on $1.5 billion to less than $2.0 billion; and 0.45% thereafter.

[4] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio. Effective May 1, 2006, each Portfolio of the Trust involved in the Substitutions pays an administration fee equal to $30,000 per year, plus its *pro rata* portion of the Trust's asset-based administration fee, which is equal to an annual rate of 0.12% of the first $3 billion of total Trust average daily net assets (excluding certain series), 0.11% of the next $3 billion, 0.105% of the next $4 billion, 0.10% of the next $20 billion and 0.0975% thereafter. Prior to that date, the administration fee for each Portfolio of the Trust was equal to $30,000 per year, plus its *pro rata* portion of the Trust's asset-based administration fee, which was equal to an annual rate of 0.04% of the first $3 billion of total Trust average daily net assets (exclusive of certain series), 0.03% of the next $3 billion, 0.025% of the next $4 billion, and 0.0225% thereafter.

[5] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the Portfolio's expenses through April 30, 2008 pursuant to an expense limitation agreement so that the Net Annual Operating Expenses of the Portfolio's Class IA shares do not exceed 0.70%. The manager of the Removed Portfolio has agreed to make payments or waive a portion of its management fee to limit Annual Operating Expenses of the Portfolio to 0.94%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $4.4 billion, while the assets of the Removed Portfolio were approximately $46.6 million.

2. Universal Value Portfolio (Class I Shares) Replaced by EQ/AllianceBernstein Value Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/AllianceBernstein Value Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Universal Value Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit Contract owners and participants by lowering the annual operating expense ratio.

	Universal Value Portfolio (percent)	EQ/AllianceBernstein Value Portfolio (percent)
Management Fee[6]	0.55	0.60
Rule 12b–1 Fee	None	None
Other Expenses	0.38	0.13
Total Annual Operating Expenses	0.93	[7] 0.73
Less Fee Waiver/Expense Reimbursement[8]	(0.08)	(0.03)
Net Annual Operating Expenses	0.85	0.70

[6] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.55% of the first $500 million in assets; 0.50% from $500 million to $1 billion; 0.45% over $1 billion.

[7] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[8] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%. The adviser of the Removed Portfolio has voluntarily agreed to reduce its advisory fee and/or reimburse the Portfolio so that annual operating expenses, excluding certain investment related expenses, will not exceed 0.85%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $4.4 billion, while the assets of the Removed Portfolio were approximately $70 million.

3. OpCap Managed Portfolio Replaced by EQ/AllianceBernstein Value Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/AllianceBernstein Value Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the OpCap Managed Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	OpCap Managed Portfolio (percent)	EQ/AllianceBernstein Value Portfolio (percent)
Management Fee [9]	0.80	0.60
Rule 12b–1 Fee	None	None
Other Expenses	0.15	0.13
Total Annual Operating Expenses	0.95	[10] 0.73
Less Fee Waiver/Expense Reimbursement [11]	0.00	(0.03)
Net Annual Operating Expenses	0.95	0.70

[9] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The Removed Portfolio's management fee schedule does not include breakpoints.

[10] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[11] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%. With respect to the Removed Portfolio, the investment adviser has agreed through December 31, 2015 reduce Annual Operating Expenses of the Removed Portfolio to the extent they would exceed 1.00% (net of any expenses offset by earnings credits from the custodian bank). Net Annual Operating Expenses do not reflect a reduction of custody expenses offset by custody credits earned on cash balances at the custodian bank.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $4.4 billion, while the assets of the Removed Portfolio were approximately $258 million.

4. Davis Value Portfolio Replaced by EQ/AllianceBernstein Value Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/AllianceBernstein Value Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Davis Value Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Davis Value Portfolio (percent)	EQ/AllianceBernstein Value Portfolio (percent)
Management Fee [12]	0.75	0.60
Rule 12b–1 Fee [13]	None	None
Other Expenses	0.06	0.13
Total Annual Operating Expenses	0.81	[14] 0.73
Less Fee Waiver/Expense Reimbursement [15]	N/A	(0.03)
Net Annual Operating Expenses	0.81	0.70

[12] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The Removed Portfolio's management fee schedule does not include breakpoints.

[13] Class IA shares of the Replacement Portfolio are not subject to a Rule 12b–1 plan. The shares of the Removed Portfolio are subject to such a plan, but the Portfolio currently does not make any payments under the plan.

[14] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[15] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $4.4 billion, while the assets of the Removed Portfolio were approximately $772 million.

5. T. Rowe Price Equity Income Portfolio Replaced by EQ/Boston Advisors Equity Income Portfolio (Class IA Shares)

As provided in the chart below and although the EQ/Boston Advisors Equity Income Portfolio (the "Replacement Portfolio" for purposes of this discussion) is smaller than the T. Rowe Price Equity Income Portfolio (the "Removed Portfolio" for purposes of this discussion), the section 26 Applicants anticipate that the Replacement Portfolio's net annual operating expense ratio will be lower than that of the Removed Portfolio immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	T. Rowe Price Equity Income Portfolio (percent)	EQ/Boston Advisors Equity Income Portfolio (percent)
Management Fee[16]	0.85	0.75
Rule 12b–1 Fee	None	None
Other Expenses	None	0.15
Total Annual Operating Expenses	0.85	[17] 0.9010
Less Fee Waiver/Expense Reimbursement[18]	N/A	(0.10)
Net Annual Operating Expenses	0.85	0.80

[16] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.750% of the first $1 billion; 0.700% on the next $1 billion; 0.675% on the next $3 billion; 0.650% on the next $5 billion; and 0.625% thereafter. The management fee schedule of the Removed Portfolio does not include breakpoints.

[17] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[18] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.80%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $449 million, while the assets of the Removed Portfolio were approximately $2.0 billion.

6. AIM V.I. Basic Value Fund (Series I Shares) Replaced by EQ/BlackRock Basic Value Equity Portfolio (Class IB Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/BlackRock Basic Value Equity Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the AIM V.I. Basic Value Fund (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. The section 26 Applicants note that the Class IB shares of the Replacement Portfolio have adopted a plan pursuant to Rule 12b–1 under the 1940 Act, while Series I shares of the Removed Portfolio are not subject to such a plan. However, the section 26 Applicants contend that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	AIM V.I. Basic Value Fund (percent)	EQ/BlackRockBasic Value Equity Portfolio (percent)
Management Fee[19]	0.72	0.55
Rule 12b–1 Fee[20]	None	0.25
Other Expenses	0.30	0.14
Total Annual Operating Expenses	1.02	[21] 0.94
Less Fee Waiver/Expense Reimbursement[22]	(0.05)	0.00
Net Annual Operating Expenses	0.97	0.94

[19] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.600% of the first $1 billion; 0.550% on the next $1 billion; 0.525% on the next $3 billion; 0.500% on the next $5 billion; and 0.475% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.725% of the first $500 million in assets; 0.700% on the next $500 million in assets; 0.675% on the next $500 million in; 0.65% on assets over $1.5 billion.

[20] Class IB shares of the Replacement Portfolio have adopted a plan pursuant to Rule 12b–1 under the 1940 Act while the Series I shares of the Removed Portfolio are not subject to such a plan. The maximum Rule 12b–1 fee for the Replacement Portfolio's Class IB shares is 0.50%, however, under an arrangement approved by the Trust's Board of Trustees, the Rule 12b–1 fee currently is limited to 0.25% of the average daily net assets attributable to the Portfolio's Class IB shares. This arrangement will be in effect at least until April 30, 2008.

[21] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[22] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IB shares of the Portfolio do not exceed 0.95%. The manager of the Removed Portfolio has contractually agreed to waive advisory fees and/or reimburse expenses of the Portfolio through April 30, 2008 to the extent necessary to limit Annual Operating Expenses of Series I shares to 1.30%. The amount shown above in "Less Fee Waiver/Expense Reimbursement" for the Removed Portfolio reflects a voluntary management fee waiver by the Portfolio's adviser.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $3.6 billion, while the assets of the Removed Portfolio were approximately $829 million.

7. Dreyfus Appreciation Portfolio (Initial Shares) Replaced by EQ/AllianceBernstein Common Stock Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/AllianceBernstein Common Stock Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Dreyfus Appreciation Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Dreyfus Appreciation Portfolio (percent)	EQ/AllianceBernstein Common Stock Portfolio (percent)
Management Fee[23]	0.75	0.47
Rule 12b–1 Fee	None	None
Other Expenses	0.07	0.13
Total Annual Operating Expenses	0.82	[24] 0.60

[23] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.550% of the first $1 billion; 0.500% on the next $1 billion; 0.475% on the next $3 billion; 0.450% on the next $5 billion; and 0.425% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.75% of the $1 billion; 0.70% on the next $1 billion; and 0.65% over $2 billion.

[24] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $9.5 billion, while the assets of the Removed Portfolio were approximately $796 million.

8. Fidelity Growth Opportunities Portfolio (Initial Class and Service Class Shares) Replaced by EQ/Capital Guardian Research Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/Capital Guardian Research Portfolio's ("Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower, respectively, than that of the Initial Class and Service Class shares of the Fidelity Growth Opportunities Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by increasing Portfolio assets and lowering annual operating expense ratios.

	Fidelity Growth Opportunities Portfolio (Initial Class shares) (percent)	Fidelity Growth Opportunities Portfolio (Service Class shares) (percent)	EQ/Capital Guardian Research Portfolio (percent)
Management Fee[25]	0.57	0.57	0.65
Rule 12b–1 Fee[26]	None	0.10	None
Other Expenses	0.15	0.15	0.78
Total Annual Operating Expenses	0.72	0.82	[27] 0.78
Less Fee Waiver/Expense Reimbursement[28]	(0.00)	(0.00)	(0.08)
Net Annual Operating Expenses	0.72	0.82	0.70

[25] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee rate for the Removed Portfolio is the sum of a group fee rate and an individual rate (0.30%). The group fee rate is based on the average net assets of all mutual funds advised by the Removed Portfolio's manager and includes breakpoints as total assets under management increase. The group fee rate cannot rise above 0.52%. The individual fee rate does not include breakpoints. The total management fee is calculated by adding the group fee rate to the individual fund fee rate, dividing by twelve, and multiplying the result by the Portfolio's average net assets throughout the month.

[26] Class IA shares of the Replacement Portfolio are not subject to a Rule 12b–1 plan. Initial Class and Service Class shares of the Removed Portfolio are subject to such a plan. The Rule 12b–1 plan for the Initial Class shares of the Removed Portfolio provides that the manager of the Portfolio may use its management fee revenues, as well as past profits or its resources from any other source, to pay the distributor for expenses incurred in connection with providing services intended to result in the sale of Initial Class shares.

[27] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[28] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%. The Manager of the Removed Portfolio has voluntarily agreed to reimburse the Portfolio to the extent that the operating expenses of Initial Class and Service Class shares exceed 0.85% and 0.95%, respectively.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.1 billion, while the assets of the Removed Portfolio (including all share classes) were approximately $561 million.

9. OpCap Equity Portfolio Replaced by EQ/Capital Guardian Research Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/Capital Guardian Research Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the OpCap Equity Portfolio (the "Removed Portfolio" for purposes of this discussion)

immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	OpCap Equity Portfolio (percent)	EQ/Capital Guardian Research Portfolio (percent)
Management Fee[29]	0.80	0.65
Rule 12b–1 Fee	None	None
Other Expenses	0.36	0.13
Total Annual Operating Expenses	1.16	[30] 0.78
Less Fee Waiver/Expense Reimbursement[31]	(0.15)	(0.08)
Net Annual Operating Expenses	1.01	0.70

[29] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio does not include breakpoints.

[30] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[31] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%. With respect to the Removed Portfolio, the investment adviser has contractually agreed through December 31, 2017 to reduce Total Annual Operating Expenses of the Removed Portfolio to the extent they would exceed 1.00% (net of any expenses offset by earnings credits from the custodian bank). Net Annual Operating Expenses do not reflect a reduction of custody expenses offset by custody credits earned on cash balances at the custodian bank. Thus, the number shown above in Net Annual Operating Expenses includes such custody expenses.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.1 billion, while the assets of the Removed Portfolio were approximately $20 million.

10. Oppenheimer Main Street Fund/VA (Service Sares) Replaced by EQ/Capital Guardian Research Portfolio (Class IA Shares)

As provided in the chart below and although the EQ/Capital Guardian Research Portfolio (the "Replacement Portfolio" for purposes of this discussion) is smaller than the Oppenheimer Main Street Fund/VA (the "Removed Portfolio" for purposes of this discussion), the Section 26 Applicants anticipate that the Replacement Portfolio's net annual operating expense ratio will be lower than that of the Removed Portfolio immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Oppenheimer Main Street Fund/VA (percent)	EQ/Capital Guardian Research Portfolio (percent)
Management Fee[32]	0.64	0.65
Rule 12b–1 Fee[33]	0.25	None
Other Expenses	0.02	0.13
Total Annual Operating Expenses	0.91	[34] 0.78
Less Fee Waiver/Expense Reimbursement[35]	0.00	(0.08)
Net Annual Operating Expenses	0.91	0.70

[32] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.75% of the first $200 million; 0.72% of the next $200 million; 0.69% of the next $200 million; 0.66% of the next $200 million; and 0.60% of average annual net assets in excess of $800 million.

[33] Class IA shares of the Replacement Portfolio are not subject to a Rule 12b-1 plan. Service shares of the Removed Portfolio are subject to such a plan.

[34] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[35] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%. The Removed Portfolio's transfer agent has voluntarily agreed to limit transfer and shareholder servicing agent fees (as reflected in "other expenses") to 0.35% per fiscal year. For the fiscal year ended December 31, 2006, the transfer agent fees did not exceed the expense limit.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.1 billion, while the assets of the Removed Portfolio were approximately $2.1 billion.

11. AIM V.I. Mid Cap Core Equity Portfolio (Series I Shares) Replaced by EQ/FI Mid Cap Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/FI Mid Cap Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the AIM V.I. Mid Cap Core Equity Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	AIM V.I. Mid Cap Core Equity Fund (percent)	EQ/FI Mid Cap Portfolio (percent)
Management Fee[36]	0.72	0.68
Rule 12b–1 Fee	None	None
Other Expenses	0.32	0.15
Acquired Fund Fees and Expenses	0.02	N/A
Total Annual Operating Expenses (including Acquired Fund Fees and Expenses)	1.06	[37]0.83
Less Fee Waiver/Expense Reimbursement[38]	0.00	(0.08)
Net Annual Operating Expenses (including Acquired Fund Fees and Expenses)	1.06	0.75

[36] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.700% of the first $1 billion; 0.650% on the next $1 billion; 0.625% on the next $3 billion; 0.600% on the next $5 billion; and 0.575% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.725% of the first $500 million in assets; 0.700% on the next $500 million in assets; 0.675% on the next $500 million in assets; 0.65% on assets over $1.5 billion.

[37] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[38] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.75%. The manager of the Removed Portfolio has contractually agreed to waive its advisory fees and/or reimburse expenses of the Portfolio, through April 30, 2008, to the extent necessary to limit Total Annual Operating Expenses of Series I shares to 1.30%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.6 billion, while the assets of the Removed Portfolio were approximately $638 million.

12. Alger American MidCap Growth Portfolio (Class O shares) Replaced by EQ/Van Kampen Mid Cap Growth Portfolio (Class IA Shares)

As provided in the chart below and although the EQ/Van Kampen Mid Cap Growth Portfolio (the "Replacement Portfolio" for purposes of this discussion) is smaller than the Alger American MidCap Growth Portfolio (the "Removed Portfolio" for purposes of this discussion), the section 26 Applicants anticipate that the Replacement Portfolio's net annual operating expense ratio will be lower than that of the Removed Portfolio immediately after the Substitution. Accordingly, the Section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Alger American MidCap Growth Portfolio (percent)	EQ/Van Kampen Mid Cap Growth Portfolio (percent)
Management Fee[39]	0.76	0.70
Rule 12b–1 Fee	None	None
Other Expenses	0.15	0.23
Total Annual Operating Expenses	0.91	[40]0.93
Less Fee Waiver/Expense Reimbursement[41]	N/A	(0.13)
Net Annual Operating Expenses	0.91	0.80

[39] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.700% of the first $1 billion; 0.650% on the next $1 billion; 0.625% on the next $3 billion; 0.600% on the next $5 billion; and 0.575% thereafter. The management fee schedule for the Removed Portfolio does not include breakpoints.

[40] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[41] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.80%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $139 million, while the assets of the Removed Portfolio were approximately $333 million.

13. MFS Mid Cap Growth Series (Initial Class Shares) Replaced by EQ/Van Kampen Mid Cap Growth Portfolio (Class IA Shares)

As provided in the chart below and although the EQ/Van Kampen Mid Cap Growth Portfolio (the "Replacement Portfolio" for purposes of this discussion) is smaller than the MFS Mid Cap Growth Series (the "Removed Portfolio" for purposes of this discussion), the section 26 Applicants anticipate that the Replacement Portfolio's net annual operating expense ratio will be lower than that of the Removed Portfolio immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	MFS Mid Cap Growth Series (percent)	EQ/Van Kampen Mid Cap Growth Portfolio (percent)
Management Fee[42]	0.75	0.70
Rule 12b–1 Fee	None	None
Other Expenses	0.15	0.23
Total Annual Operating Expenses	0.90	[43] 0.93
Less Fee Waiver/Expense Reimbursement[44]	N/A	(0.13)
Net Annual Operating Expenses	0.90	0.80

[42] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.700% of the first $1 billion; 0.650% on the next $1 billion; 0.625% on the next $3 billion; 0.600% on the next $5 billion; and 0.575% thereafter.

[43] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[44] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.80%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $139 million, while the assets of the Removed Portfolio were approximately $233 million.

14. Dreyfus Small Cap Stock Index Portfolio (Service Shares) Replaced by EQ/Small Company Index Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/Small Company Index Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Dreyfus Small Cap Stock Index Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Dreyfus Small Cap Stock Index Portfolio (percent)	EQ/Small Company Index Portfolio (percent)
Management Fee[45]	0.35	0.25
Rule 12b–1 Fee[46]	0.25	None
Other Expenses	0.01	0.16
Acquired Fund Fees and Expenses	0.02	0.01
Total Annual Operating Expenses	0.63	[47] 0.42
Less Fee Waiver/Expense Reimbursement[48]	N/A	0.00
Net Annual Operating Expenses	0.63	0.42

[45] The management fee schedules for the Replacement Portfolio and Removed Portfolio do not include breakpoints.

[46] Class IA shares of the Replacement Portfolio are not subject to a Rule 12b–1 plan. The Service shares of the Removed Portfolio are subject to such a plan.

[47] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[48] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.1 billion, while the assets in the Removed Portfolio were approximately $466 million.

15. OpCap Small Cap Portfolio Replaced by EQ/Small Company Index Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/Small Company Index Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the OpCap Small Cap Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the Section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	OpCap Small Cap Portfolio (percent)	EQ/Small Company Index Portfolio (percent)
Management Fee[49]	0.80	0.25
Rule 12b–1 Fee	None	None
Other Expenses	0.13	0.16
Acquired Fund Fees and Expenses	N/A	0.01
Total Annual Operating Expenses	0.93	[50]0.42
Less Fee Waiver/Expense Reimbursement[51]	0.00	0.00
Net Annual Operating Expenses	0.93	0.42

[49] The management fee schedules for the Replacement Portfolio and Removed Portfolio do not include breakpoints.
[50] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.
[51] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%. With respect to the Removed Portfolio, the investment adviser has agreed through December 31, 2015 to reduce Annual Operating Expenses of the Removed Portfolio to the extent they would exceed 1.00% (net of any expenses offset by earnings credits from the custodian bank). Net Annual Operating Expenses do not reflect a reduction of custody expenses offset by custody credits earned on cash balances at the custodian bank.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.1 billion, while the assets of the Removed Portfolio were approximately $175 million.

16. MFS New Discovery Series (Initial Class Shares) Replaced by EQ/AllianceBernstein Small Cap Growth Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/AllianceBernstein Small Cap Growth Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the MFS New Discovery Series (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio:

	MFS New Discovery Series (Initial shares) (percent)	EQ/Alliance Bernstein Cap Growth Portfolio (percent)
Management Fee[52]	0.90	0.74
Rule 12b–1 Fee	None	None
Other Expenses	0.13	0.13
Total Annual Operating Expenses	1.03	[53]0.87

[52] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.750% of the first $1 billion; 0.700% on the next $1 billion; 0.675% on the next $3 billion; 0.650% on the next $5 billion; and 0.625% thereafter.
[53] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.2 billion, while the assets of the Removed Portfolio were approximately $819 million.

17. Janus Flexible Bond Portfolio (Institutional and Service Shares) Replaced by EQ/JPMorgan Core Bond Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the Class IA shares of the EQ/JPMorgan Core Bond Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower, respectively, than that of the Institutional and Service shares of the Janus Flexible Bond Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering annual operating expense ratios.

	Janus Flexible Bond Portfolio (Institutional shares) (percent)	Janus Flexible Bond Portfolio (Service shares) (percent)	EQ/JPMorgan Core Bond Portfolio (Class IA shares) (percent)
Management Fee[54]	0.55	0.55	0.44
Rule 12b–1 Fee[55]	None	0.25	None
Other Expenses	0.10	0.10	0.15
Total Annual Operating Expenses	0.65	0.90	[56]0.59
Less Fee Waiver/Expense Reimbursement[57]	0.00	0.00	0.00
Net Annual Operating Expenses	0.65	0.90	0.59

[54] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.450% of the first $750 million; 0.425% on the next $750 million; 0.400% on the next $1 billion; 0.380% on the next $2.5 billion; and 0.370% thereafter. The management fee schedule for the Removed Portfolio does not include breakpoints.

[55] Class IA shares of the Replacement Portfolio and Institutional shares of the Removed Portfolio are not subject to Rule 12b–1 plans. The Service shares of the Removed Portfolio are subject to such a plan.

[56] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[57] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008 pursuant to an expense limitation agreement so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%. The manager of the Removed Portfolio has contractually agreed to waive the Portfolio's total operating expenses through May 1, 2008 such that they do not exceed 0.90% for Institutional and Service shares.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.6 billion, while the assets of the Removed Portfolio (including all share classes) were approximately $292 million.

18. PIMCO Total Return Portfolio (Administrative Shares) Replaced by EQ/JPMorgan Core Bond Portfolio (Class IA Shares)

As provided in the chart below and although the Class IA shares of the EQ/JPMorgan Core Bond Portfolio (the "Replacement Portfolio" for purposes of this discussion) is smaller than the PIMCO Total Return Portfolio (the "Removed Portfolio" for purposes of this discussion), the section 26 Applicants anticipate that the Replacement Portfolio's net annual operating expense ratio will be lower than that of the Removed Portfolio immediately after the Substitution. Accordingly, the Section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	PIMCO Total Return Portfolio (percent)	EQ/JPMorgan Core Bond Portfolio (percent)
Management Fee[58]	0.25	0.44
Rule 12b–1 Fee	None	None
Other Expenses	0.40%	0.15%
Total Annual Operating Expenses	0.65	[59]0.59
Less Fee Waiver/Expense Reimbursement[60]	N/A	0.00
Net Annual Operating Expenses	0.65	0.59

[58] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.450% of the first $750 million; 0.425% on the next $750 million; 0.400% on the next $1 billion; 0.380% on the next $2.5 billion; and 0.370% thereafter. The management fee schedule for the Removed Portfolio does not include breakpoints.

[59] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[60] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.6 billion, while the assets of the Removed Portfolio were approximately $3.3 billion.

19. Universal Core Plus Fixed Income Portfolio (Class I shares) Replaced by EQ/JPMorgan Core Bond Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/JPMorgan Core Bond Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Universal Core Plus Fixed Income Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Universal Core Plus Fixed Income Portfolio (percent)	EQ/JPMorgan Core Bond Portfolio (percent)
Management Fee[61]	0.38	0.44
Rule 12b–1 Fee	None	None
Other Expenses	0.30	0.15
Total Annual Operating Expenses	0.68	[62] 0.59
Less Fee Waiver/Expense Reimbursement[63]	0.00	0.00
Net Annual Operating Expenses	0.68	0.59

[61] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.450% of the first $750 million; 0.425% on the next $750 million; 0.400% on the next $1 billion; 0.380% on the next $2.5 billion; and 0.370% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.375% up to $1 billion; 0.30% over $1 billion.

[62] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[63] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%. The manager of the Removed Portfolio has voluntarily agreed to reduce its advisory fee and/or reimburse the Portfolio so that annual operating expenses will not exceed 0.70%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $1.6 billion, while the assets of the Removed Portfolio were approximately $424 million.

20. OpCap Renaissance Portfolio Replaced by EQ/Lord Abbett Mid Cap Value Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/Lord Abbett Mid Cap Value Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the OpCap Renaissance Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	OpCap Renaissance Portfolio (percent)	EQ/Lord Abbett Mid Cap Value Portfolio (percent)
Management Fee[64]	0.80	0.70
Rule 12b–1 Fee	None	None
Other Expenses	0.29	0.18
Total Annual Operating Expenses	1.09	[65] 0.88
Less Fee Waiver/Expense Reimbursement[66]	(0.07)	(0.08)
Net Annual Operating Expenses	1.02	0.80

[64] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.700% of the first $1 billion; 0.650% on the next $1 billion; 0.625% on the next $3 billion; 0.600% on the next $5 billion; and 0.575% thereafter. The management fee schedule for the Removed Portfolio does not include breakpoints.

[65] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[66] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008 pursuant to an expense limitation agreement so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.80%. With respect to the Removed Portfolio, the investment adviser has contractually agreed through December 31, 2017 to reduce Total Annual Operating Expenses of the Removed Portfolio to the extent they would exceed 1.00% (net of any expenses offset by earnings credits from the custodian bank).

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $322 million, while the assets of the Removed Portfolio were approximately $35 million.

21. T. Rowe Price New America Growth Portfolio Replaced by EQ/Capital Guardian Growth Portfolio (Class IA Shares)

As provided in the chart below, the section 26 Applicants anticipate that the EQ/Capital Guardian Growth Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the T. Rowe Price New America Growth Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	T. Rowe Price New America Growth Portfolio (percent)	EQ/Capital Guardian Growth Portfolio (percent)
Management Fee[67]	0.85	0.65
Rule 12b–1 Fee	None	None
Other Expenses	0.00	0.16
Total Annual Operating Expenses	0.85	[68] 0.81
Less Fee Waiver/Expense Reimbursement[69]	N/A	(0.11)
Net Annual Operating Expenses	0.85	0.70

[67] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio does not include breakpoints.

[68] The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio, as described in footnote 5.

[69] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.70%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $402 million, while the assets of the Removed Portfolio were approximately $91 million.

22. Universal U.S. Real Estate Portfolio (Class I and Class II Shares) Replaced by EQ/Van Kampen Real Estate Portfolio (Class IA and Class IB Shares)

Under the proposed Substitutions, the Insurance Companies would substitute Class IA and Class IB shares of the EQ/Van Kampen Real Estate Portfolio (the "Replacement Portfolio" for purposes of this discussion) for Class I and Class II shares, respectively, of the Universal U.S. Real Estate Portfolio (the "Removed Portfolio" for purposes of this discussion). As provided in the chart below, the Section 26 Applicants anticipate that the net annual operating expense ratios of the Class IA and Class IB shares of the Replacement Portfolio will be the same as those of the corresponding class of shares of the Removed Portfolio immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by maintaining annual operating expense ratios.

	Universal U.S. Real Estate Portfolio (Class I shares) (percent)	EQ/Van Kampen Real Estate Portfolio (Class IA shares)* (percent)
Management Fee[70]	0.74%	0.90%
Rule 12b–1 Fee	None	None
Other Expenses	0.27	0.13
Total Annual Operating Expenses	1.01	1.03
Less Fee Waiver/Expense Reimbursement[71]	(0.00)	(0.02)
Net Annual Operating Expenses	1.01	1.01

	Universal U.S. Real Estate Portfolio (Class II shares) (percent)	EQ/Van Kampen Real Estate Portfolio (Class IB shares)* (percent)
Management Fee[70]	0.74	0.90
Rule 12b–1 Fee[72]	0.35	0.25
Other Expenses	0.27	0.13
Total Annual Operating Expenses	1.36	1.28
Less Fee Waiver/Expense Reimbursement[71]	(0.10)	(0.02)
Net Annual Operating Expenses	1.26	1.26

* The EQ/Van Kampen Real Estate Portfolio is a newly created Portfolio, therefore, the fees and expenses presented in the table above are estimates for the current fiscal period.

[70] The annual management fee rate for the Replacement Portfolio as a percentage of the Portfolio's average daily net assets is equal to 0.90% on the first $1 billion; 0.85% on the next $1 billion; 0.825% on the next $3 billion; 0.80% on the next $5 billion; and 0.775% thereafter. The annual management fee rate for the Removed Portfolio as a percentage of the Portfolio's average daily net assets is equal to 0.80% on the first $500 million; 0.75% from $500 million to $1 billion; and 0.70% thereafter.

[71] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2008, pursuant to an expense limitation agreement, so that the Net Annual Operating Expenses of the Class IA and Class IB shares of the Portfolio do not exceed an annual rate of 1.01% and 1.26%, respectively. The adviser of the Removed Portfolio has voluntarily agreed to reduce its advisory fee and/or reimburse the Portfolio so that the Annual Operating Expenses of the Class I and Class II shares of the Portfolio do not exceed an annual rate of 1.10% and 1.35%, respectively. The amount show above in "Less Fee Waiver/Expense Reimbursement" for the Class II shares of the Removed Portfolio includes a voluntary fee waiver by the Portfolio's distributor.

[72] Class II shares of the Removed Portfolio and Class IB shares of the Replacement Portfolio are subject to a Rule 12b–1 plan. The maximum Rule 12b–1 fee for the Removed Portfolio's Class II shares is 0.35%. The maximum Rule 12b–1 fee for the Replacement Portfolio's Class IB shares is 0.50%, however, under an arrangement approved by the Trust's Board of Trustees, the Rule 12b–1 fee currently is limited to 0.25% of the average daily net assets attributable to the Portfolio's Class IB shares. This arrangement will be in effect at least until April 30, 2008.

As of December 31, 2006, the Assets of the Removed Portfolio (including all share classes) were approximately $2.6 billion.

23. Alger American Balanced Portfolio (Class O Shares) Replaced by Franklin Income Securities Fund (Class 2 Shares)

As provided in the chart below, the section 26 Applicants anticipate that the Franklin Income Securities Fund's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Alger American Balanced Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Alger American Balanced Portfolio (percent)	Franklin Income Securities Fund (percent)
Management Fee[73]	0.71	0.46
Rule 12b–1 Fee[74]	None	0.25
Other Expenses	0.15	0.01
Total Annual Operating Expenses	0.86	0.72
Less Fee Waiver/Expense Reimbursement[75]	(0.04)	N/A
Net Annual Operating Expenses	0.82	0.72

[73] The management fee schedule for the Replacement Portfolio is equal to 0.625% of the value of net assets up to and including $100 million; plus 0.50% of the value of net assets over $100 million up to and including $250 million; plus 0.45% of the value of net assets over $250 million up to and including $10 billion: plus 0.44% of the value of net assets over $10 billion up to and including $12.5 billion; plus 0.42% of the value of net assets over $12.5 billion up to and including $15 billion; plus 0.40% of the value of net assets over $15 billion. The management fee schedule for the Removed Portfolio does not include breakpoints.

[74] The Removed Portfolio is not subject to a Rule 12b–1 plan, but the Replacement Portfolio is subject to such a plan. The maximum Rule 12b–1 fee for the Replacement Portfolio's Class 2 shares is 0.35%, however, the Portfolio's board of trustees has set the current rate at 0.25% per year until through May 1, 2008.

[75] Effective December 1, 2006 through November 30, 2011, the manager of the Removed Portfolio has contractually agreed to waive 0.04% of its advisory fees.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $5.6 billion, while the assets of the Removed Portfolio were approximately $286 million.

24. MFS Total Return Series (Initial Class Shares) Replaced by Franklin Income Securities Fund (Class 2 Shares)

As provided in the chart below, the section 26 Applicants anticipate that the Franklin Income Securities Fund's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the MFS Total Return Series (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	MFS Total Return Series (percent)	Franklin Income Securities Fund (percent)
Management Fee[76]	0.75	0.46
Rule 12b–1 Fee[77]	None	0.25
Other Expenses	0.10	0.01
Total Annual Operating Expenses	0.85	0.72
Less Fee Waiver/Expense Reimbursement[78]	(0.02)	N/A
Net Annual Operating Expenses	0.83	0.72

[76] The management fee schedule for the Replacement Portfolio is equal to 0.625% of the value of net assets up to and including $100 million; plus 0.50% of the value of net assets over $100 million up to and including $250 million; plus 0.45% of the value of net value over $250 million up to and including $10 billion; plus 0.44% of the value of net assets over $10 billion up to and including $12.5 billion; plus 0.42% of the value of net assets over $12.5 billion up to and including $15 billion; plus 0.40% of the value of net assets over $15 billion.

[77] The Removed Portfolio is not subject to a Rule 12b–1 plan, but the Replacement Portfolio is subject to such a plan. The maximum Rule 12b–1 fee for the Replacement Portfolio's Class 2 shares is 0.35%, however, the Portfolio's board of trustees has set the current rate at 0.25% per year until through May 1, 2008.

[78] The Removed Portfolio's management fee as set forth in its advisory agreement is 0.75% of average daily net assets annually. The Removed Portfolio's adviser has agreed in writing to reduce its management fee to 0.65% on average daily net assets in excess of $3 billion. For the Removed Portfolio's most recent fiscal year, the effective management fee was 0.73% of average daily net assets. This written agreement will remain in effect until modified by the Removed Portfolio's board of trustees.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $5.6 billion, while the assets of the Removed Portfolio were approximately $3.9 billion.

25. T. Rowe Price Personal Strategy Balanced Portfolio Replaced by Franklin Income Securities Fund (Class 2 Shares)

As provided in the chart below, the section 26 Applicants anticipate that the Franklin Income Securities Fund's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the T. Rowe Price Personal Strategy Balanced Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. Accordingly, the section 26 Applicants represent that the Substitution will benefit the Contract

owners and participants by lowering the annual operating expense ratio.

	T. Rowe Price Personal Strategy Balanced Portfolio (percent)	Franklin Income Securities Fund (percent)
Management Fee[79]	0.90	0.46
Rule 12b–1 Fee[80]	None	0.25
Other Expenses	None	0.01
Total Annual Operating Expenses	0.90	0.72
Less Fee Waiver/Expense Reimbursement[81]	(0.02)	N/A
Net Annual Operating Expenses	0.88	0.72

[79] The management fee schedule for the Replacement Portfolio is equal to 0.625% of the value of net assets up to and including $100 million; plus 0.50% of the value of net assets over $100 million up to and including $250 million; plus 0.45% of the value of net assets over $250 million up to and including $10 billion; plus 0.44% of the value of net assets over $10 billion up to and including $12.5 billion; plus 0.42% of the value of net assets over $12.5 billion up to and including $15 billion; plus 0.40% of the value of net assets over $15 billion. The management fee schedule for the Removed Portfolio does not include breakpoints.

[80] The Removed Portfolio is not subject to a Rule 12b–1 plan, but the Replacement Portfolio is subject to such a plan. The maximum Rule 12b–1 fee for the Replacement Portfolio's Class 2 shares is 0.35%, however, the Portfolio's board of trustees has set the current rate at 0.25% per year until through May 1, 2008.

[81] Reflects a credit received from investing in another T. Rowe Price Fund.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $5.6 billion, while the assets of the Removed Portfolio were approximately $178 million.

26. Fidelity Growth Portfolio (Initial Class and Service Class Shares) Replaced by Fidelity Contrafund Portfolio (Initial Class and Service Class Shares)

Under the proposed Substitution, the Insurance Companies would substitute Initial Class and Service Class shares of the Fidelity Contrafund Portfolio (the "Replacement Portfolio" for purposes of this discussion) for Initial Class and Service Class shares, respectively, of the Fidelity Growth Portfolio (the "Removed Portfolio" for purposes of this discussion). As provided in the chart below, the section 26 Applicants anticipate that the net annual operating expense ratio of each of the Initial Class shares and Service Class shares of the Replacement Portfolio will be lower than that of the corresponding class of shares of the Removed Portfolio immediately after the Substitution. Accordingly, the Section 26 Applicants represent that the Substitution will benefit the Contract owners and participants by lowering annual operating expense ratios.

	Fidelity Growth Portfolio (Initial Class shares) (percent)	Fidelity Contrafund Portfolio (Initial Class shares) (percent)
Management Fee[82]	0.57	0.57
Rule 12b–1 Fee[83]	None	None
Other Expenses	0.11	0.09
Total Annual Operating Expenses	0.68	0.66
Less Fee Waiver/Expense Reimbursement[84]	(0.00)	(0.00)
Net Annual Operating Expenses	0.68	0.66
	Fidelity Growth Portfolio (Service Class shares) (percent)	Fidelity Contrafund Portfolio (Service Class shares) (percent)
Management Fee[82]	0.57	0.57
Rule 12b–1 Fee[83]	0.10	0.10
Other Expenses	0.11	0.09
Total Annual Operating Expenses	0.78	0.76
Less Fee Waiver/Expense Reimbursement[84]	(0.00)	(0.00)
Net Annual Operating Expenses	0.78	0.76

[82] The management fee rate for the Replacement and Removed Portfolios is the sum of a group fee rate and an individual rate (0.30%). The group fee rate is based on the average net assets of all mutual funds advised by the Replacement and Removed Portfolios' manager and includes breakpoints as total assets under management increase. The group fee rate cannot rise above 0.52%. The individual fee rate does not include breakpoints. The total management fee is calculated by adding the group fee rate to the individual fund fee rate, dividing by twelve, and multiplying the result by the Portfolio's average net assets throughout the month.

[83] Initial Class shares and Service Class shares of the Replacement and Removed Portfolios are subject to Rule 12b–1 plans. The Rule 12b–1 plan for the Initial Class shares of the Removed and Replacement Portfolios provides that the manager of the Portfolios may use its management fee revenues, as well as past profits or its resources from any other source, to pay the distributor for expenses incurred in connection with providing services intended to result in the sale of Initial Class shares. Such payments have also been authorized by the trust's board of trustees for the Service Class shares of the Removed and Replacement Portfolios. In addition, the maximum Rule 12b–1 fee for the Removed and Replacement Portfolios' Service Class shares is 0.25%; however, each Portfolio currently pays a fee at an annual rate of 0.10%.

[84] The Manager of the Replacement and Removed Portfolios has voluntarily agreed to reimburse each Portfolio to the extent that the operating expenses of Initial Class and Service Class shares exceed 0.85% and 0.95%, respectively.

As of December 31, 2006, the assets of the Replacement Portfolio (including all share classes) were approximately $21 billion, while the assets of the Removed Portfolio (including all share classes) were approximately $7.2 billion.

27. Universal Equity Growth Portfolio (Class I Shares) Replaced by Fidelity Contrafund Portfolio (Initial Class Shares)

As provided in the chart below, the section 26 Applicants anticipate that the Fidelity Contrafund Portfolio's (the "Replacement Portfolio" for purposes of this discussion) net annual operating expense ratio will be lower than that of the Universal Equity Growth Portfolio (the "Removed Portfolio" for purposes of this discussion) immediately after the Substitution. The section 26 Applicants note that the Initial Class shares of the Replacement Portfolio have adopted a plan pursuant to Rule 12b–1 under the 1940 Act, while Class I shares of the Removed Portfolio are not subject to such a plan. However, the section 26 Applicants contend that the Substitution will benefit the Contract owners and participants by lowering the annual operating expense ratio.

	Universal Equity Growth Portfolio (percent)	Fidelity Contrafund Portfolio (Initial Class shares) (percent)
Management Fee[85]	0.50	0.57
Rule 12b–1 Fee[86]	None	None
Other Expenses	0.34	0.09
Total Annual Operating Expenses	0.84	0.66
Less Fee Waiver/Expense Reimbursement[87]	0.00	(0.00)
Net Annual Operating Expenses	0.84	0.66

[85] The management fee rate for the Replacement Portfolio is the sum of a group fee rate and an individual rate (0.30%). The group fee rate is based on the average net assets of all mutual funds advised by the Replacement Portfolio's manager and includes breakpoints as total assets under management increase. The group fee rate cannot rise above 0.52%. The individual fee rate does not include breakpoints. The total management fee is calculated by adding the group fee rate to the individual fund fee rate, dividing by twelve, and multiplying the result by the Portfolio's average net assets throughout the month. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.50% on the first $1 billion in assets; 0.45% on assets from $1 billion to $2 billion; 0.40% on assets from $2 billion to $3 billion; and 0.35% on assets over $3 billion.

[86] The Removed Portfolio is not subject to a Rule 12b–1 plan, but the Replacement Portfolio is subject to such a plan. The Rule 12b–1 plan for the Initial Class shares of the Removed Portfolio provides that the manager of the Portfolio may use its management fee revenues, as well as past profits or its resources from any other source, to pay the distributor for expenses incurred in connection with providing services intended to result in the sale of Initial shares.

[87] The Manager of the Replacement Portfolio has voluntarily agreed to reimburse the Portfolio to the extent that the total operating expenses of Initial shares exceed 0.85%. The manager of the Removed Portfolio has voluntarily agreed to reduce its advisory fee and/or reimburse the Portfolio so that total annual operating expenses, excluding certain investment-related expenses, will not exceed 0.85%.

As of December 31, 2006, the assets of the Replacement Portfolio were approximately $21 billion, while the assets of the Removed Portfolio were approximately $150 million.

22. The section 26 Applicants currently expect that the proposed Substitutions will be carried out on or about August 17, 2007 or as soon as reasonably practical thereafter ("Substitution Date") and by supplements to the prospectuses for the Contracts and Separate Accounts, which were delivered to Contract owners and participants at least thirty (30) days before the Substitutions, each Insurance Company has notified all Contract owners and participants of its intention to take the necessary actions, including seeking the order requested by the application, to substitute shares of the Replacement Portfolios for the Removed Portfolios as described herein. The supplements advised Contract owners and participants that from the date of the supplement until the date of the proposed Substitutions, Contract owners and participants are permitted to make transfers of Contract value (or annuity unit value) out of each Removed Portfolio subaccount to one or more other subaccounts without the transfers (or exchanges) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge, as applicable. The supplements also informed Contract owners and participants that the Insurance Companies will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after each proposed Substitution.[88] The supplements also advised Contract owners and participants how to provide instructions on reallocating Contract value in light of the proposed Substitutions.

23. In addition, the supplements advised Contract owners and participants that any Contract value remaining in a Removed Portfolio subaccount on the Substitution Date will be transferred to the corresponding Replacement Portfolio subaccount and that the Substitutions will take place at relative net asset value. The supplements also advised Contract owners and participants that for at least 30 days following each proposed Substitution, the Insurance Companies will permit Contract owners and participants to make transfers of Contract value (or annuity unit value) out of each Replacement Portfolio subaccount to one or more other subaccounts without the transfers (or exchanges) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge, as applicable.

24. Each Insurance Company has sent or will send Contract owners and participants prospectuses for the relevant Replacement Portfolios prior to the Substitutions. The section 26 Applicants will send the appropriate prospectus supplement (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract owners or participants), containing this disclosure to all existing Contract owners and participants. Prospective purchasers and new purchasers of Contracts will be provided with a Contract prospectus and the

[88] One exception to this is that the Insurance Companies may impose restrictions on transfers to prevent or limit disruptive transfer and other "market timing" activities by Contract owners, participants or agents of Contract owners or participants as described in the prospectuses for the Separate Accounts and the Portfolios.

supplement containing disclosure regarding the Substitutions, as well as a prospectus and/or supplement for the Replacement Portfolios. The Contract prospectus and the supplement and the prospectus and/or supplement for the Replacement Portfolios will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

25. In addition to the prospectus supplements distributed to Contract owners and participants, within five business days after the proposed Substitutions are completed, Contract owners and participants will be sent a written notice of the Substitutions informing them that each Substitution was carried out and that they may transfer all Contract value or cash value under a Contract invested in any one of the subaccounts on the date of the notice to one or more other subaccounts available under their Contract at no cost and without regard to the usual limit on the frequency of transfers among the variable account options. The notice will also reiterate that (other than with respect to implementing policies and procedures designed to prevent disruptive transfers and other market timing activity) each Insurance Company will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers or, to the extent transfer charges apply to a Contract, to impose any charges on transfers until at least 30 days after each proposed Substitution. The Insurance Companies will also send each Contract owner and participant a current prospectus for each of the relevant Replacement Portfolios to the extent they have not previously received a current version.

26. Each Insurance Company also is seeking approval of the proposed Substitutions from any state insurance regulators whose approval may be necessary or appropriate. The proposed Substitutions will take place at relative net asset value determined on the date of the Substitutions pursuant to Section 22 of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's or participant's Contract value, cash value, or death benefit or in the dollar value of his or her investment in the Separate Accounts. Each Substitution will be effected by redeeming shares of the Removed Portfolio in cash and/or in-kind on the Substitution Date at their net asset value and using the proceeds of those redemptions to purchase shares of the Replacement Portfolio at their net asset value on the same date. All in-kind redemptions from a Removed Portfolio of which any of the Applicants is an affiliated person will be effected in accordance with the conditions set forth in the no-action letter issued by the staff of the Commission to Signature Financial Group, Inc. (Dec. 28, 1999).

27. Moreover, the section 26 Applicants state that Contract owners and participants will not incur any fees or charges as a result of the proposed Substitutions, nor will their rights or insurance benefits or the Insurance Companies' obligations under the Contracts be altered in any way. Consequently, all expenses incurred in connection with the proposed Substitutions, including any brokerage, legal, accounting, and other fees and expenses, will be paid by the Insurance Companies. In addition, the proposed Substitutions will not impose any tax liability on Contract owners or participants. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners and participants to be greater after the proposed Substitutions than before the proposed Substitutions. All Contract-level fees will remain the same after the proposed Substitutions. No fees will be charged on the transfers made at the time of the proposed Substitutions because each proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts.

28. With respect to the Substitutions involving the Old Mutual Select Value Portfolio, OpCap Managed Portfolio, Davis Value Portfolio, T. Rowe Price Equity Income Portfolio, Dreyfus Appreciation Portfolio (Initial shares), OpCap Equity Portfolio, Oppenheimer Main Street Fund/VA (Service shares), AIM V.I. Mid Cap Core Equity Portfolio (Series I shares), Alger American MidCap Growth Portfolio (Class O shares), MFS Mid Cap Growth Series (Initial Class shares), Dreyfus Small Cap Stock Index Portfolio (Service shares), OpCap Small Cap Portfolio, MFS New Discovery Series (Initial Class shares), Janus Flexible Bond Portfolio (Institutional and Service shares), OpCap Renaissance Portfolio, and the T. Rowe Price New America Growth Portfolio, the section 26 Applicants represent that, with respect to those who were Contract owners or participants on the date of the proposed Substitutions, the Insurance Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the two years following the date of the proposed Substitution, the subaccounts investing in the applicable Replacement Portfolio such that the sum of the Replacement Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculations of subaccount unit value) for such period will not exceed, on an annualized basis, the sum of the corresponding Removed Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio for fiscal year 2006.

29. With respect to the Substitutions involving the Universal Value Portfolio (Class I shares), AIM V.I. Basic Value Fund (Series I shares), Fidelity Growth Opportunities Portfolio (Initial Class and Service Class shares), PIMCO Total Return Portfolio (Administrative shares), Universal Core Plus Fixed Income Portfolio (Class I shares), and the Universal U.S. Real Estate Portfolio (Class I and Class II shares), the Section 26 Applicants represent that, with respect to those who were Contract owners or participants on the date of the proposed Substitutions, at no time after the date of the Substitution will the Insurance Companies increase Contract charges or total Separate Account charges (net of any waiver or reimbursements) of the subaccounts that invest in the applicable Replacement Portfolio. If the net operating expenses for the applicable Replacement Portfolio (taking into account any expense waivers or reimbursements) for any fiscal quarter following the date of the Substitution exceed on an annualized basis the net expense ratio for the corresponding Removed Portfolio for fiscal year 2006, the Insurance Companies will reimburse the Separate Account expenses paid during that quarter of the subaccount that invests in the applicable Replacement Portfolio to the extent necessary to offset the amount by which that Replacement Portfolio's net expense ratio for such period exceeds, on an annualized basis, that of the corresponding Removed Portfolio.

30. The section 26 Applicants also agree that, with respect to shares issued in connection with the proposed Substitution involving the Universal U.S. Real Estate Portfolio, the Rule 12b–1 fees for the Replacement Portfolio's Class IB shares will not be raised above the Removed Portfolio's Class II shares maximum Rule 12b–1 fee (0.35%)

without first obtaining shareholder approval.[89]

31. In addition, the section 26 Applicants further agree that with respect to the Substitutions involving the Alger American Balanced Portfolio (Class O shares), MFS Total Return Series (Initial Class shares), T. Rowe Price Personal Strategy Balanced Portfolio, Fidelity Growth Portfolio (Initial Class and Service Class shares), and the Universal Equity Growth Portfolio (Class I shares), the Insurance Companies will not increase total separate account charges with respect to the corresponding Replacement Portfolio sub-accounts for any outstanding Contracts on the date of the Substitutions for a period of two years from the date of the Substitutions.

32. Moreover, the section 26 Applicants agree that, with respect to the Substitutions involving the Alger American Balanced Portfolio (Class O shares), MFS Total Return Series (Initial Class shares), and the T. Rowe Price Personal Strategy Balanced Portfolio, to the extent that the annualized expense ratio of each applicable Replacement Portfolio exceeds, for each fiscal period (not to exceed a fiscal quarter) during the two years following the date of the proposed Substitutions, the net expense ratio of the corresponding Removed Portfolio for fiscal year 2006, the Insurance Companies will, for each Contract outstanding on the date of the proposed Substitutions, reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the two years following the date of the proposed Substitution, the subaccounts investing in the Replacement Portfolio such that the sum of the Replacement Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculations of subaccount unit value) for such period will not exceed, on an annualized basis, the sum of the Removed Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio for fiscal year 2006.

33. In addition, with respect to the Substitutions involving the Fidelity Growth Portfolio (Initial Class and Service Class shares), and the Universal Equity Growth Portfolio (Class I shares), the Section 26 Applicants agree that, in connection with assets held under Contracts affected by the Substitutions, the Insurance Companies will not receive, for three years from the date of the proposed Substitutions, any direct or indirect benefits from the relevant Replacement Portfolio, its advisers, or underwriters (or its affiliates) at a rate higher than that which they had received from the corresponding Removed Portfolios, their advisers, or underwriters (or their affiliates), including without limitation, 12b–1, shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets. The Insurance Companies also represent that the proposed Substitutions and the selection of the relevant Replacement Portfolio were not motivated by any financial consideration paid or to be paid to the Insurance Companies or their affiliates by the relevant Replacement Portfolio, its advisers, underwriters or affiliates.

[89] The Class IB shares of the Replacement Portfolio have a higher maximum Rule 12b–1 fee than the Class II shares of the Removed Portfolio.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that "[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

2. The section 26 Applicants assert that the each proposed Substitution involves a substitution of securities within the meaning of section 26(c) of the 1940 Act and therefore request an order from the Commission pursuant to section 26(c) approving the proposed Substitutions.

3. The section 26 Applicants state they have reserved the right under the Contracts to substitute shares of another eligible investment fund for one of the current investment funds offered as a funding option under the Contracts both to protect themselves and their Contract owners and participants in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit the Insurance Companies and their respective Contract owners and participants.

4. The section 26 Applicants also argue that each Replacement Portfolio and its corresponding Removed Portfolio have similar, and in some cases substantially similar or identical, investment objectives, policies and risks. In addition, each proposed Substitution retains for Contract owners and participants the investment flexibility that is a central feature of the Contracts. The section 26 Applicants assert that any impact on the investment programs of affected Contract owners and participants, including the appropriateness of the available investment options, should therefore be negligible.

5. The section 26 Applicants further assert that the ultimate effect of the Substitutions would be to remove overlapping and duplicative investment options and those investment options that have not attracted sufficient Contract owner or participant interest to support maintaining them as investment options under the Contracts. The Substitutions will permit the Insurance Companies to present information to their Contract owners and participants in a simpler and more concise manner, and it is anticipated that after the proposed Substitutions, Contract owners and participants will be provided with disclosure documents that contain a simpler presentation of the available investment options under their Contracts.

6. In addition, the section 26 Applicants also argue that in connection with each proposed Substitution, Contract owners and participants with subaccount balances invested in a Replacement Portfolio will have the same or lower net operating expense ratio(s) after the Substitution. In this regard, each Insurance Company has agreed to impose certain expense limits, as discussed above, to ensure that Contract owners and participants do not incur higher expenses as a result of a Substitution either for a period of two years after the Substitution or for the life of the Contract, as applicable.

7. In addition to the foregoing, the section 26 Applicants generally submit that each proposed Substitution meets the standards that the Commission and its staff have applied to similar substitutions that the Commission previously has approved. The section 26 Applicants also submit that the proposed Substitutions are not of the type that section 26(c) was designed to prevent as the Contracts provide each Contract owner or participant with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners or participants under their Contracts. Additionally, the Substitutions will not, in any manner, reduce the nature or quality of the

available investment options. In this regard, the proposed Substitutions retain for Contract owners and participants the investment flexibility which is a central feature of the Contracts.

8. Moreover, the section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty (other than with respect to implementing policies and procedures designed to prevent disruptive transfer and other market timing activity) that may otherwise have been imposed for a period beginning on the date of the supplement notifying Contract owners and participants of the proposed Substitutions (which supplement has been delivered to Contract owners and participants at least thirty (30) days before the Substitutions) and ending no earlier than thirty (30) days after the proposed Substitutions. The Substitutions, therefore, will not result in the type of costly forced redemption that section 26(c) was designed to prevent.

9. The section 26 Applicants also note that the proposed Substitutions are also unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract or participating in a group Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners and participants also may have considered the Insurance Company's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitutions, nor will the annuity, life or tax benefits afforded under the Contracts held by any of the affected Contract owners or participants.

10. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

11. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from the provisions of Section 17(a) if: (i) the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transactions are consistent with the policy of each registered investment company concerned; and (iii) the proposed transactions are consistent with the general purposes of the 1940 Act.

12. The section 17 Applicants request an order pursuant to section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the In-Kind Transactions in connection with the proposed Substitutions.

13. The section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received, as described in the application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The In-Kind Transactions will be effected at the respective net asset values of each of the relevant Removed Portfolios and each of the relevant Replacement Portfolios, as determined in accordance with the procedures disclosed in the registration statement for the relevant investment company and as required by Rule 22c–1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in a Replacement Portfolio will equal the value of its investments in the corresponding Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

14. The section 17 Applicants state they will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. The section 17 Applicants will assure themselves that the investment companies will carry out the proposed In-Kind Transactions in conformity with the conditions of Rule 17a–7 (or, as applicable, a Removed Portfolio's and a Replacement Portfolio's normal valuation procedures, as set forth in the relevant investment company's registration statement), except that the consideration paid for the securities being purchased or sold will not be cash.

15. The section 17 Applicants also assert that the proposed In-Kind Transactions do not involve overreaching on the part of any person concerned. Furthermore, the section 17 Applicants represent that the proposed In-Kind Transactions will be consistent with the policies of the Removed and corresponding Replacement Portfolios, as recited in their respective current registration statements, and that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the application, the Applicants each respectively request that the Commission issue an order of approval pursuant to section 26(c) of the 1940 Act and an order of exemption pursuant to section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14663 Filed 7–27–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56120; File No. SR–NASDAQ–2007–060]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend Nasdaq's Authority Under Its Cease and Desist Pilot Program

Date: July 24, 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 19, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On July 20, 2007, Nasdaq filed 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

Nasdaq proposes a rule change to extend for a two-year period, to June 23, 2009, Nasdaq's authority under its cease and desist pilot program. At this time, Nasdaq is not proposing any substantive changes to the rules covered by the pilot program. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://nasdaq.complinet.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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May 2003, the Commission approved, on a pilot basis, a rule change that gave the National Association of Securities Dealers, Inc. ("NASD") the authority to issue temporary cease and desist orders and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.[5] When Nasdaq registered as a national securities exchange, it also adopted a cease and desist program. Because NASD is Nasdaq's regulatory services provider and administers Nasdaq's disciplinary program under contract, Nasdaq generally seeks to maintain comparability between its disciplinary procedure rules and NASD's. NASD recently extended the above mentioned pilot rule through June 23, 2009.[6] Accordingly, Nasdaq is proposing a comparable extension. Although Nasdaq has not had occasion to use the authority to date, the pilot extension will ensure that the authority remains available for the next two years. The authority under the rule will expire after the additional two-year period unless the pilot program is further extended or adopted on a permanent basis with Commission approval. Nasdaq is also amending Nasdaq Rules 9556 and 9800 to delete erroneous cross-references.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[7] in general, and with sections 6(b)(5) and (6) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and is further designed to provide that Nasdaq members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or Nasdaq rules. The extension of the pilot program is consistent with Nasdaq's obligations under the Act, because cease and desist orders are designed to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. Nasdaq represents that such waivers will allow Nasdaq to implement the proposed rule change prior to the time of the expiration of the current pilot. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 5-day pre-filing notice requirement and 30-day operative delay and make this proposed rule change immediately effective.[11] The Commission believes that the waiver will allow Nasdaq to continue, without interruption, the existing operation of the pilot until June 23, 2009.

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–NASDAQ–2007–060 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–NASDAQ–2007–060. This file number should be included on the subject line if e-mail is used. To help the

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (SR–NASD–98–80).

[6] *See* Securities Exchange Act Release No. 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR–NASD–2007–033).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5) and (6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[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).

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 Nasdaq. 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–2007–060 and should be submitted on or before August 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14605 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56119; File No. SR–NYSEArca–2007–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Quarterly Options Series Pilot

Date: July 24, 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 23, 2007, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the Quarterly Options Series pilot program ("Pilot Program") through July 10, 2008. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 July 12, 2006, the Exchange filed with the Commission a proposed rule change that allowed it to establish the Pilot Program, pursuant to which the Exchange lists and trades Quarterly Options Series.[5] The rule change was effective upon filing. The Pilot Program, which was originally due to expire on July 10, 2007, was extended for a two-week interim period through July 24, 2007, while the Exchange finalized its Pilot Program Report ("Report").[6] The Exchange hereby proposes to extend the Pilot Program through July 10, 2008.

In the Interim Extension Release, the Exchange stated that it would submit the Report in connection with this proposal to extend the Pilot Program through July 10, 2008. The Report provides an analysis of the Pilot Program covering the entire period for which the program was in effect. The Exchange has submitted its Report as Exhibit 3 to the Form 19b–4 filed with the Commission. The Report may be examined at the places specified in Item IV below. The Report includes: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Options Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity on the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

The Exchange represents that the Report supports its belief that extension of the Pilot Program is proper. Among other things, the Report shows the strength of the Pilot Program as reflected by the overall volume and open interest of Quarterly Options Series traded on the both NYSE Arca and other national options exchanges. The Report shows that the Pilot Program has not created, and in the future should not create, any capacity, operational, or regulatory problems attributable to Quarterly Option Series.

Finally, NYSE Arca represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

2. Statutory Basis

The Exchange believes that the continuation of the Quarterly Options Series Pilot Program will stimulate customer interest in options by creating greater trading opportunities and flexibility in investment choices. The Exchange further believes that continuation of the Pilot Program will provide the ability to more closely tailor investment strategies and provide a valuable hedging tool for investors. For these reasons, the Exchange believes the

[12] 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. 54166 (July 18, 2006), 71 FR 42151 (July 25, 2006) (File No. SR–NYSEArca–2006–45).

[6] *See* Securities Exchange Act Release No. 56040 (July 10, 2007), 72 FR 39112 (July 17, 2007) (File No. SR–NYSEArca–2007–67) ("Interim Extension Release").

proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become operative prior to the 30th day after filing.[11]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the benefits of the Pilot Program to continue without interruption.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2007–70 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–2007–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–70 and should be submitted on or before August 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14604 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days before doing so.

[12] For 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).

[13] As set forth in the Exchange's original filing proposing the Pilot Program, if the Exchange were to propose an extension, an expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the program, a report that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Options Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program. *See* Form 19b–4 for File No. SR–PCX–2005–32, filed March 16, 2005.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56121; File No. SR–Phlx–2007–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change Regarding Rules Pertaining to Training Requirements and Floor Procedure Advices

July 24, 2007.

On May 25, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to amend: (a) Rule 625, Training; (b) Equity Floor Procedure Advices and Order & Decorum Regulations, F–30 Training; and (c) Options Floor Procedure Advices and Order & Decorum Regulations, F–30 Options Trading Floor Training, to clarify and expand the Exchange's training requirements. Specifically, the proposed rule change expanded the category of individuals who are required to attend the mandatory training sessions and the training topics covered. Further, the Exchange set forth mandatory training requirements, which would take place on at least a semi-annual basis, for floor members. The Exchange also proposed changes to the language in Rule 970, Floor Procedure Advices: Violations, Penalties and Procedures, to delete the reference to the now-obsolete Market Surveillance Department and to provide that any authorized official of the Exchange may sign a citation for a floor procedure advice violation. The proposal was published for comment in the **Federal Register** on June 19, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review of 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 national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Expanding the Exchange's current mandatory training program should provide a means for keeping members and persons employed by or associated with such members or member organizations, and Participant Authorized Users, informed of and educated about, among other things, current rules and regulations and trading-related Exchange systems, which should enhance member compliance with the federal securities law and Exchange rules. Additionally, updating the language in Exchange Rule 970 should promote efficiency in connection with the issuance of citations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–2007–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14606 Filed 7–27–07; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55729 (June 12, 2007), 72 FR 33797.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

[Meeting No. 07–04]

Sunshine Act Meeting

Time and Date: 9 a.m. (EDT), August 1, 2007, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Status: Open.

Agenda

Old Business

Approval of minutes of May 31, 2007, Board Meeting.

New Business

1. President's Report.
2. Report of the Finance, Strategy, and Rates Committee.
   - A. Annual budget.
   - B. Customer Items.
   - i. Time-of-use power supply arrangements with a directly-served customer.
   - ii. Real time energy arrangements.
   - iii. Implementation of 5-Minute Response program.
   - iv. Interconnection agreements with the cities of Princeton and Paducah, Kentucky.
   - v. Limited interruptible power/ Limited firm power.
   - C. PURPA determinations.
   - D. Financial trading program modifications.
3. Report of the Operations, Environment, and Safety Committee.
   - A. Watts Bar Nuclear Plant Unit 2 construction and startup.
   - B. Authorization to purchase a combined cycle generating facility.
   - C. Amended Board Practice on Fuel, Power Purchases or Sales, and Related Contract Approvals.
4. Report of the Human Resources Committee.

FOR FURTHER INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 25, 2007.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 07–3717 Filed 7–26–07; 12:44 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Presumed To Conform Actions Under General Conformity

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Notice.

SUMMARY: The Clean Air Act (CAA) section 176(c), 42 U.S.C. 7506(c) and Amendments of 1990 [1] require that all Federal actions conform to an applicable State Implementation Plan (SIP). The U.S. Environmental Protection Agency (EPA) has established criteria and procedures for Federal agencies to use in demonstrating conformity with an applicable SIP that can be found at 40 CFR 93.150 *et seq.* ("The Rule").

The Rule allows Federal agencies to develop a list of actions that are *presumed to conform* to a SIP [2] for the criteria pollutants and their precursors that are identified in 40 CFR 93.153(b)(1) and (b)(2) and in the National Ambient Air Quality Standards (NAAQS) under 40 CFR 50.4–50.12.[3] The criteria pollutants of concern for local airport air quality are ozone (O_3) and its two major precursors (volatile organic compounds (VOC) and nitrogen oxides (NO_X)), carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide

[1] Clean Air Act Title I Air Pollution Prevention and Control, Part D, Subpart 1, Section 176 Limitation on Certain Federal Assistance.

[2] 40 CFR Part 93, § 93.153(f).

[3] NAAQS established by the EPA represent maximum concentration standards for criteria pollutants to protect human health (primary standards) and to protect property and aesthetics (secondary standards).

(SO_2)[4], and particulate matter consisting of small particulates with a diameter less than or equal to 2.5 micrometers ($PM_{2.5}$) and larger particulates with a diameter of up to 10 micrometers (PM_{10}).[5]

According to the Rule[6], Federal agencies must meet the criteria for establishing activities that are presumed to conform by either:

(1) Clearly demonstrating that the total of direct and indirect emissions from the type of activities that would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including emission levels specified in the applicable SIP[7]; or

(2) Providing documentation that emissions from the types of actions that would be presumed to conform are below the applicable *de minimis* levels established in 40 CFR § 93.153(b)(1) and (b)(2).[8] This documentation may be based on similar actions that the agency has taken over recent years.[9] Besides documenting the basis for presumed to conform activities, Federal agencies must fulfill procedural requirements under the Rule relating to publication in the **Federal Register**, notification to Federal/State/local agencies, opportunity for public comment, and availability of responses to public comments.[10]

In this Notice, the Federal Aviation Administration (FAA) is identifying a list of actions involving agency approval and financial assistance for airport projects that are presumed to conform. The benefits of this list include the elimination of unnecessary agency costs associated with evaluating actions with few if any emissions. As a result, the agency will be able to streamline the environmental process by applying more of its resources to actions that have the potential to reach regulated emission levels or adversely impact air quality.

Addressing the need for efficiency and streamlining, the EPA states that the provisions allowing Federal agencies to establish categories of actions that are presumed to conform are "intended to assure that these Rules are not overly burdensome and Federal agencies would not spend undue time assessing actions that have little or no impact on air quality."[11] Furthermore, the EPA states that "Federal actions which are *de minimis* should not be required by this Rule to make an applicability analysis. A different interpretation could result in an extremely wasteful process which generates vast numbers of useless conformity statements."[12] Consequently, the Rule allows individual Federal agencies to present categories of actions that have been documented to be *de minimis* and, therefore should be "presumed to conform" to the Rule under 40 CFR 93.153(f).

This Notice contains a summary of documentation and analysis which demonstrates that actions described below will not exceed the applicable *de minimis* emission levels for nonattainment and maintenance areas, as specified under 40 CFR 93.153(b). In relation to the agency's demonstration of presumed to conform actions, the EPA has defined broad categories of actions in 40 CFR 93.153(c)(2) that are exempt from the Rule because the actions result in no emissions increase or an increase in emissions that is clearly *de minimis*. In this Notice, the FAA distinguishes various airport-related actions that are exempt under the Rule from those that are presumed to conform.

Notification Process for Presumed To Conform

The notification requirements in the Rule are as follows:[13]

(1) The Federal agency must identify through publication in the **Federal Register** its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the metropolitan planning organization (MPO) and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the list of such activities in the **Federal Register**.

In meeting the requirements above, the FAA issued the Draft Notice, entitled *Federal Presumed to Conform Actions Under General Conformity*, in the **Federal Register** of Monday, February 12, 2007 (Vol. 72, No. 28, pp. 6641–6656). All of the appropriate organizations were notified and encouraged to comment, including EPA Regions, State and local air quality agencies, and metropolitan planning organizations.

A 45-day public comment period was provided for the Draft Federal Notice, allowing a few additional weeks for comment beyond the minimum 30-day notice period. Seven (7) letters were submitted to the FAA. From these letters, the FAA identified twenty-nine (29) separate comments to which the agency prepared individual written responses. All of the letters, comments, and responses are publicly available for review on the FAA Office of Airports Web site for environmental programs.

Based on comments received and follow-up discussions with the EPA, the FAA made appropriate revisions to the **Federal Register** Notice. The FAA is completing its notification requirements by publishing the completed list of presumed to conform actions in this Final **Federal Register** Notice. The public may obtain further program information or review project documentation by contacting the office and person listed under "For Further Information Contact."

FOR FURTHER INFORMATION CONTACT: Dr. Jake A. Plante, Planning and Environmental Division, Federal Aviation Administration, 800 Independence Avenue, APP–400, SW., Room 616, Office of Airports, Washington, DC 20591, *jake.plante@faa.gov*, phone (202) 493–4875, fax (202) 267–5257.

Table of Contents

The major sections of this document are as follows:

I. Background

Under the Rule (40 CFR 93.153(g)(h)), the FAA and other agencies are entitled to develop a list of proposed actions that are presumed to conform. The process of establishing presumed to conform classifications is predicated on the

[4] FAA calculated SO_X is considered equal to SO_2

[5] $PM_{2.5}$ is a subset of PM_{10} with separate standards for each.

[6] 40 CFR Part 93, § 93.153(g).

[7] 40 CFR Part 93, § 93.153(g)(1).

[8] Title 40 CFR Part 93, § 93.153(g)(2).

[9] Ibid.

[10] Title 40 CFR Part 93, § 93.153(h).

[11] 58 FR 63228 (Nov. 30, 1993).

[12] 58 FR 63229 (Nov. 30, 1993).

[13] 40 CFR Part 93, § 93.153(h)(1–4).

concept of conformity. Conformity assures that an activity that is presumed to conform does not cause or contribute to any new violation of the NAAQS or interfere with provisions contained in applicable SIPS.

The administration and enforcement of conformity regulations are delegated by the EPA to the individual States through provisions in each SIP. A SIP is the written plan submitted to the EPA detailing each State's strategy to control air emissions to meet and maintain the NAAQS in geographic areas that are designated as nonattainment areas. The EPA requires each State to devise such a plan for each criteria pollutant causing violations or the EPA will impose a Federal implementation plan ("FIP") for the State. When a nonattainment area achieves compliance with the NAAQS, it becomes a maintenance area for at least 10 years with ongoing State responsibility to ensure continued attainment.[14]

General Conformity

General conformity refers to the process of demonstrating that a general Federal action conforms to the applicable SIP. A general Federal action is defined more by what it is not, rather than by what it is. A general Federal action is any Federal action that is not a Federal "transportation" action and consequently not subject to the conformity requirements established for Federal highway or transit actions, referred to as "transportation conformity." A Federal transportation action is an action related to transportation plans, programs, and projects that are developed, funded, or approved under Title 23 United States Code (USC) or the Federal Transit Act (FTA).[15] Since FAA actions do not meet the definition of a transportation action, they are general actions by default and thus subject to the General Conformity Rule.

The FAA and other Federal agencies subject to general conformity must make a determination that the Federal action conforms to the SIP's purpose to meet and maintain the NAAQS before the action is taken. If the proposed actions are not specifically exempt or classified as presumed to conform, it is necessary to conduct an emissions inventory as part of the applicability analysis to determine if emissions are likely to equal or exceed the established screening criteria emission rates known as the *de minimis* thresholds. A general conformity determination is required for each pollutant identified as nonattainment or maintenance when the total of direct and indirect emissions caused by a Federal action equals or exceeds any of the applicable *de minimis* thresholds.[16]

FAA Airport Development Actions Subject to General Conformity

The FAA is responsible for deciding whether its actions involving an airport located in a nonattainment or maintenance area require a general conformity evaluation.[17] FAA actions that require a conformity evaluation include unconditional approval of any or all parts of an airport layout plan (ALP), final Airport Improvement Program (AIP) grant approvals, and approvals for use of Passenger Facility Charges (PFCs). Other FAA actions that may require a conformity evaluation include proposed actions for which an environmental assessment (EA) or environmental impact statement (EIS) is prepared under the requirements of the National Environmental Policy Act.

II. Existing Exemptions

For the FAA to provide the proper context and baseline for identifying and proposing a list of presumed to conform Federal actions, it is important to consider the extent to which FAA airport-related actions and activities may qualify for exemption from general conformity requirements. The EPA has defined broad categories of exempt actions under 40 CFR 93.153(c)(2) that result in no emissions increase or increases in emissions that are clearly *de minimis*. These actions are not subject to further analysis for applicability, conformity, or regional significance under the Rule.

As part of this **Federal Register** Notice, the FAA has interpreted how the exemptions in the Rule apply to FAA actions associated with airport facilities and aviation planning. The following discussion addresses the most relevant examples of these exemptions regarding FAA actions for airport development.

1. Rulemaking and Policy Development [40 CFR 93.153(c)(2)(iii)]

The FAA develops rules and policies to address issues of safety, aviation noise abatement, and systematic improvements to efficiency. This includes issuance of airport policy and planning documents for the National Plan of Integrated Airport Systems (NPIAS), the Airport Capital Improvement Program (ACIP), and Advisory Circulars on planning, design, and development programs. These documents provide administrative and technical guidance to the airport community and the public and are not intended for direct implementation. The actual process of rulemaking or policy development is typically administrative in nature and does not cause an increase in air emissions.

2. Routine Maintenance and Repair Activities [40 CFR 93.153(c)(2)(iv)]

In conformance with FAA standards and regulations, the airport sponsor must maintain airport facilities and the airfield in a manner that ensures the safe operation of the airport. These activities constitute Federal actions when Federal funding from the FAA is involved. Airport maintenance, repair, removal, replacement, and installation work that matches the characteristics, size, and function of a facility as it existed before the replacement or repair activity typically qualifies as routine maintenance and repair for purposes of general conformity. Such activity does not increase the capacity of the airport or change the operational environment of the airport.

The FAA does not consider major runway reconstruction to qualify as exempt under the Rule if the reconstruction results in a runway that is hardened, lengthened, or widened to support a larger class of aircraft. Proposed funding for such a project would require analysis of emission levels to determine the applicability of general conformity requirements.

Routine maintenance for existing runways, taxiways, aprons, ramps, fillets, and airport roadways includes in-kind resurfacing,[18] re-marking of existing runways, taxiways, apron areas, etc., and runway grooving and rubber removal projects. Other areas of routine replacement, maintenance, and repair work that may be considered exempt from the Rule include:

- Existing signage.
- Existing lighting systems.
- Existing pavement markings.
- Wind or landing direction indicators.
- Existing airport security access control.
- Existing buildings and structures.
- Existing heating, ventilation, and air conditioning (HVAC) systems.
- Existing infrastructure such as sanitary sewer or electrical systems.

[14] CAA, Section 175A, 42 U.S.C. 7505a.

[15] 49 U.S.C. 1601 *et seq.*

[16] 40 CFR Part 93, § 93.153(b).

[17] "Conformity evaluation" refers to the overall process of assessing whether an action/project is subject to general conformity requirements, which may include an applicability analysis needed to make a conformity determination. See Question #1, EPA and FAA General Conformity Guidance for Airports: Questions and Answers, September 25, 2002.

[18] Depending on numerous factors affecting surface conditions, airports will generally resurface asphalt runways every 7–10 years.

• General landscaping, erosion control, and grading.

3. Planning, Studies, and Provisions of Technical Assistance [40 CFR 93.153(c)(2)(xii)]

Planning and information-related actions do not represent implementation of operational changes at the airport and therefore do not result in emission increases. Consequently, actions such as those listed below may be considered exempt from the Rule:

• FAA funding and acceptance of Master Plans and Updates.
• FAA funding of System Planning Studies.
• FAA acceptance of noise exposure maps and approval of noise compatibility programs pursuant to 49 U.S.C. 47501 *et seq.*, as implemented by 14 CFR Part 150.
• FAA approval of noise and access restrictions on operations by Stage 3 aircraft under 49 U.S.C. 47524, as implemented by 14 CFR Part 161.

4. Transfers of Ownership, Interests, and Titles in Land, Facilities, and Real and Personal Properties, Regardless of the Form or Method of the Transfer [40 CFR 93.153(c)(2)(xiv)]

5. Actions (or Portions Thereof) Associated With Transfers of Land, Facilities, Title, and Real Properties Through an Enforceable Contract or Lease Agreement Where the Delivery of the Deed Is Required To Occur Promptly After a Specific, Reasonable Condition Is Met, Such as Promptly After the Land Is Certified as Meeting the Requirements of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and Where the Federal Agency Does Not Retain Continuing Authority To Control Emissions Associated With the Lands, Facilities, Title, or Real Properties [40 CFR 93.153(c)(2)(xix)]

Actions by the FAA to transfer or acquire land or equipment that do not increase the capacity of the airport or change the operational environment affecting air emissions. Such actions include funding or approving transfers, acquisitions, or releases by airport sponsors,[19] or preparing and executing related contracts or written agreements. Related actions that may be considered exempt from the Rule are:

• Facilities and equipment purchases.
• Land acquisition and relocation assistance.
• Land releases for which there is no reasonable expectation of a change in land use.
• Avigation easement acquisition.
• Acquisition of an existing privately owned airport involving only change of ownership.

*6. Alterations and Additions of Existing Structures as Specifically Required by New or Existing Applicable Environmental Legislation or Environmental Regulations (e.g., Hush Houses for Aircraft Engines * * *) [40 CFR 93.153(d)(4)]*

Actions that are initiated in response to specific environmental laws and regulations (e.g., energy efficiency, noise abatement structures and equipment) may be considered exempt from the Rule. These actions include:

• Equipment purchases.
• Protective noise barriers.
• Required noise mitigation actions including the installation and operation of hush houses for aircraft and engine maintenance.

7. Federal Actions Which Are Part of a Continuing Response to an Emergency or Disaster [40 CFR 93.153(d)(2) and (e)]

Actions in response to emergencies, natural disasters, etc., that involve overriding concerns for public health and welfare, national security interests, or foreign policy commitments may be exempt from general conformity requirements for six months and possibly longer if justified in writing by the agency.[20]

III. Presumed To Conform Project Descriptions and Justifications

The FAA began the process of developing and documenting presumed to conform actions with a detailed environmental survey of airport projects. The survey was conducted by all FAA regional offices, which identified approved airport projects over a recent two-year period that received a categorical exclusion (CATEX) or Finding of No Significant Impact (FONSI).[21] This information was requested only for airports included in areas designated as nonattainment or maintenance by the EPA. Information compiled from these surveys described about 600 completed projects at over 100 airports.

The survey information was processed by assigning each airport planning and development project into one of two categories: (1) Projects that are exempt from the requirements of the Rule as defined by 40 CFR 93.153(e); or (2) projects that require an applicability analysis before being defined as *de minimis* (i.e., presumed to conform), according to 40 CFR 93.153(c)(1). Specific information on the application of these two project categories is presented in Section II and Section III of this document, respectively.

In the analysis of the survey results, any airport project that exceeded *de minimis* levels even once was considered ineligible for the presumed to conform list. Follow-up communications with airports and FAA regional representatives helped to clarify terminology and confirm the reliability of the presumptions. In addition, the FAA performed detailed worst-case analyses where practicable in areas where project size and implementation could conceivably result in the exceedance of *de minimis* levels.

The airport project survey data and other agency experience in implementing similar actions taken over recent years provide the fundamental basis for all of the presumed to conform classifications. The FAA conducted additional quantitative analyses for specific project areas, as practicable. These analyses are summarized in Section III, and include the following: pavement markings; terminal upgrades; commercial vehicle staging areas; non-runway paving; heating, ventilation, and air conditioning (HVAC) systems; and low-emission technology and alternative fuel vehicles.

Based on the survey of airport projects, the additional evaluations, and quantitative analyses, only those project categories that were proven to be reliably and consistently *de minimis* were classified as presumed to conform. In general, FAA presumed to conform actions involve maintenance, navigation, construction, safety, security activities, and new technology and vehicle systems that do not modify or increase airport capacity or change the operational environment of the airport in such a way as to increase air emissions above *de minimis* thresholds.

Presented below are the airport project descriptions and justifications for FAA actions that are presumed to conform. There are fifteen project categories, which are discussed in the following order:

1. Pavement Markings.
2. Pavement Monitoring Systems.
3. Non-Runway Pavement Work.
4. Aircraft Gate Areas on Airside.
5. Lighting Systems.

[19] Airport "sponsors" are planning agencies, public agencies, or private airport owners/operators that have the legal and financial ability to carry out the program requirements for FAA financial assistance.

[20] Airports located in nonattainment or maintenance areas with small regional emission budgets may need to check whether a proposed exempt action might be regionally significant under 40 CFR Part 93, § 93.153(i).

[21] FAA Order 1050.1E, chapter 3 (CATEX) and Chapter 4, § 406 (FONSI), pursuant to the National Environmental Policy Act.

6. Terminal and Concourse Upgrades.
7. New HVAC Systems, Upgrades, and Expansions.
8. Airport Security.
9. Airport Safety.
10. Airport Maintenance Facilities.
11. Airport Signage.
12. Commercial Vehicle Staging Areas.
13. Low-Emission Technology and Alternative Fuel Vehicles.
14. Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations.
15. Routine Installation and Operation of Aviation Navigation Aids.

1. Pavement Markings

Airport sponsors apply paint on paved surfaces, such as runways, taxiways, apron areas, cargo areas, and parking lots to ensure the safe operation of aircraft during approach and landing and to provide safe direction for surface vehicles. Most pavement marking projects are considered routine maintenance activities, qualifying as exempt from the Rule (see Section II, number 2 of this Notice). These actions are designed to restore and improve painted surfaces that have deteriorated due to time, use, and weather.

Federal actions that alter airport use through new pavement markings are not routine maintenance but are presumed to conform if such actions do not increase airport capacity or introduce a larger class of aircraft at the airport. For example, new runway markings for improved flight procedures from visual flight rules (VFR) to instrument flight rules (IFR) are presumed to conform if normal traffic flow is maintained.

Pollutant emissions due to the paint application process are primarily composed of VOC from the paint, and NO_X emitted from the trucks and application compressors required to prepare the surface and apply the paint. Emissions of both VOC and NO_X are considered precursors to the development of ozone in the atmosphere. Therefore, emissions from the application of painted pavement markings pertain most importantly to ozone nonattainment and maintenance areas.

A worst-case calculation of emissions was performed based on equipment and types of paint required to mark a Category III 13,000-foot runway with an instrument lighting system (ILS) to FAA specifications. The calculation of emissions included the removal of existing markings using water pressure through a compressor mounted on a diesel truck, a pavement sweeper truck to remove debris, the application of the paint using an air compressor mounted on a diesel truck, and a small hand sprayer for detailed markings, such as squared corners. A total of 2,492 gallons of paint (a combination of white, yellow, and black) were applied to the representative runway at a rate of 115 square feet per gallon of paint. The trucks transporting the paint and compressors were assumed to be similar to a single axle, Class 7 diesel pickup truck.[22] The sweeper was assumed to be a regenerative diesel air power model, using a chassis engine and an auxiliary engine to power the brushes. Manufacturers' Material Safety Data Sheets were referenced for the VOC emissions factors for the three colors of latex paint. Emissions factors for the criteria and precursor pollutants were obtained from the EPA *Nonroad Engine and Vehicle Emission Study-Report*.[23]

Load factors and horsepower ratings were obtained from the EPA *Nonroad Engine and Vehicle Emission Study-Report and Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling*.[24]

The maximum volume of paint that could be applied without equaling or exceeding the *de minimis* thresholds for any nonattainment and maintenance classification was calculated.[25] For instance, an airport located within an extreme nonattainment area for ozone is limited to net project emissions of 10 tons of VOC per year. This translates into an annual application of 21,890 gallons of paint, which also causes 0.21 tons[26] of NO_X emissions. For example, this volume of paint would mark eight Category III 13,000-foot ILS runways. A volume of paint on the order of one million gallons is required to cause emissions of NO_X to equal 10 tons per year. Likewise, a volume of paint on the order of five million to 176 million gallons is required in order to be sufficient to exceed the *de minimis* thresholds for CO, SO_2, or PM_{10}. Therefore, VOCs are the limiting pollutant[27] for the application of paint at airports and emissions of NO_X, CO, SO_2, and PM_{10} are considerably less. Table III–1 provides the gallon application limits, which include the use of construction equipment for pavement markings in nonattainment and maintenance areas.

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[22] The Gross Vehicle Weight Rating (GVWR) system defines a Class 7 diesel truck as one that can carry 26,001 to 33,000 pounds of weight on two axles.

[23] EPA Report 460/3–91–02, November 1991, *Nonrood Engine ond Vehicle Emission Study—Report*.

[24] EPA Report NR–005A, December 9, 1997, revised June 15, 1998, *Median Life, Annuol Activity, ond Load Foctor Volues for Nonrood Engine Emissions Modeling*.

[25] Calculations of maximum paint volume include consideration of construction equipment.

[26] Short tons, where one ton equals 2,000 lbs.

[27] The limiting pollutant is defined as the criteria pollutant that first exceeds *de minimis* levels for a given project.

Table III-1

PRESUMED TO CONFORM LIMITS FOR SELECTED PROJECTS

NONATTAINMENT AND MAINTENANCE AREA CLASSIFICATIONS						PRESUMED TO CONFORM AIRPORT PROJECTS			
Classification Characteristics and Pollutant					TPY	Pavement Markings (gallons) 1/	Terminal Upgrades (ft^2)	Commercial Vehicle Staging Areas (ft^2)	New Airfield Work (non-runway) (ft^2)
NONATTAINMENT	OZONE	Serious		NO_x	50	5,235,194	92,945	1,123,179	1,096,929
				VOC	50	109,455	770,658	11,939,754	11,916,560
		Severe		NO_x	25	2,617,596	46,473	561,584	548,453
				VOC	25	54,727	385,329	5,969,817	5,958,160
		Extreme		NO_x	10	1,047,033	18,589	224,626	219,368
				VOC	10	21,890	154,132	2,387,855	2,383,112
		Marginal & Moderate	Inside OTR	NO_x	100	10,470,384	185,891	2,246,370	2,193,881
				VOC	50	109,455	770,658	11,939,754	11,916,560
			Outside OTR	NO_x	100	10,470,384	185,891	2,246,370	2,193,881
				VOC	100	218,911	1,541,316	23,879,629	23,833,359
	CO				100	5,612,654	350,565	6,112,122	6,669,263
	SO_2				100	176,376,634	1,805,687	24,233,530	23,682,564
	NO_2				100	13,960,500	185,891	2,995,159	2,925,175
	PM_{10}		Moderate		100	134,668,450	1,698,110	26,042,637	26,050,568
			Serious		70	94,267,915	1,188,677	18,229,806	18,235,280
	$PM_{2.5}$				100	134,668,450	1,698,110	26,042,637	26,050,568
MAINTENANCE	OZONE	NO_x			100	10,470,384	185,891	2,246,370	2,193,881
		VOC	Inside OTR		50	109,455	770,658	11,939,754	11,916,560
			Outside OTR		100	218,911	1,541,316	23,879,629	23,833,359
	CO				100	5,612,654	350,565	6,112,122	6,669,263
	SO_2				100	176,376,634	1,805,687	24,233,530	23,682,564
	NO_2				100	7,852,788	185,891	2,995,159	2,925,175
	PM_{10}				100	134,668,450	1,698,110	26,042,637	26,050,568
	$PM_{2.5}$				100	134,668,450	1,698,110	26,042,637	26,050,568

Notes: TPY is tons per year; ft^2 is square feet.
OTR is Ozone Transport Region

1/ Maximum annual volume of paint necessary to reach de minimis thresholds accounts for construction emissions.

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2. Pavement Monitoring Systems

Airports have the option of installing a pavement monitoring system to indicate when the durability and strength of the pavement needs to be reinforced. These systems are

implemented for safety reasons to ensure that an airport's runway, taxiway, and apron network are sufficiently able to support the weight of aircraft. Minor construction work is required for the installation of the monitoring system. Assuming the installation requires the use of a pickup truck, a utility truck, an excavator, an asphalt paver, a compactor, and a small generator, construction would have to proceed continuously (eight hours per day, 20 days per month) for more than a year (1.1 years) in order to produce emissions near the level of 10 tons of NO_X. For the remaining criteria pollutants and precursors, construction on the order of several years would be required to approach the *de minimis* thresholds. Pavement monitoring systems are installed in less than a week; therefore, project construction emissions are well below *de minimis* and presumed to conform.

3. Non-Runway Pavement Work

Airfield pavement must be constructed to withstand the weight of aircraft and to produce a firm, stable, smooth, year-round, all-weather surface. The pavement must be of such quality and thickness that it will not fail under the weight of aircraft and it must possess sufficient inherent stability to withstand, without damage, the abrasive action of aircraft traffic and adverse weather conditions.[28] These pavement specifications apply to non-runway areas of the airfield where aircraft operate, including taxiways, apron areas, and gate areas. The specific pavement requirements are satisfied by applying rigid pavement consisting of layers of crushed stone bound and pressed into a smooth surface.

Most airfield construction projects that are presumed to conform involve areas of the airfield, generally referred to as apron areas, that accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, or aircraft parking. These types of airfield projects do not include projects intended to increase airport capacity or those that are otherwise defined as routine maintenance for existing apron areas. Taxiway construction projects are limited to improvements of existing taxiways that will not affect runway use, increase capacity, enable new aircraft types, or change existing airfield operations when complete (e.g., new high speed exits would represent such a change). Construction projects in this category do not include blasting or substantial "cut and fill" activity to level the terrain or prepare the surface area. If an apron area or taxiway project does not meet the conditions as described above, a project emissions inventory of direct and indirect emissions is required to determine the further applicability of general conformity.

Pollutant emissions due to airfield construction are solely from the use of construction equipment and are primarily comprised of NO_X, a precursor to ozone development, and CO resulting from the trucks operated to haul the large amounts of stone and gravel that must be used to form the support layers for the paving material.

The evaluation of emissions from airfield paving was based on a representative project in the FAA Eastern Region. The project required equipment and materials to construct approximately 600,000 square feet of airfield and concrete shoulder area with an assumed surface design life of 20 years.[29] The conservative calculation of emissions included the preparation of the site allowing for a four-inch geotextile layer of subgrade soil, a four-inch frost protection layer of crushed stone, a four-inch sub base layer of finely crushed stone, an eight-inch base layer of gravel mixed with a stabilizer such as cement,[30] and the application of a six-inch layer of Portland cement concrete.[31] This type of construction design allows for a total pavement thickness of 26 inches; the minimum total pavement thickness for the accommodation of jet aircraft weighing 100,000 pounds or more is 20 inches.[32] Also included in the construction emissions inventory is the installation of a drainage system.

Emissions factors for construction equipment were obtained from the EPA's 1991 *Nonroad Engine and Vehicle Emission Study—Report*.[33] Load factors and horsepower ratings for the construction equipment were obtained from the EPA's 1991 *Nonroad Engine and Vehicle Emission Study—Report* and the EPA's 1997 *Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling*.[34]

The maximum allowable square footage of airfield construction was calculated for each nonattainment and maintenance category. The analysis showed that NO_X was the limiting pollutant for airfield paving projects and that emissions of VOC, CO, SO_2, and PM_{10} are considerably less in comparison with NO_X.

Table III–1 provides the area limits for non-runway airfield construction in nonattainment and maintenance areas. For instance, an airport located within an area designed as extreme nonattainment for ozone, which limits net project emissions to the rate of 10 tons per year of NO_X, is limited to constructing 219,368 square feet (5.04 acres) of apron area, which also causes 0.93 tons of VOC emissions. As a reference, four acres is generally sufficient to provide remote or "hardstand" (non-gate) parking for three narrow-body aircraft. Construction of an airfield/apron area on the order of 2.38 million square feet (54.7 acres) causes emissions of VOC up to 10 tons per project, creating emissions of NO_X of approximately 109 tons. New airfield construction on the order of 150 to 600 acres would be required to exceed the *de minimis* thresholds for CO, SO_2 and PM_{10}. Generally speaking, emissions of NO_X are on the order of three times the emissions of CO for these types of projects and are more than 10 times the emissions of the remaining criteria pollutants.

4. Aircraft Gate Areas on Airside

Aircraft gate areas refer to the area outside of the terminals and concourses where jetways are used to link parked aircraft to the terminal building. Federal actions to improve aircraft gate areas (e.g., gate electrification) can be part of airport modernization efforts involving new airline tenants or the introduction of newer and more efficient technology. Aircraft gate areas involve a wide range of activities from aircraft loading and unloading of passengers and cargo to the servicing of aircraft by lavatory, food supply, and maintenance vehicles.

Upgrades to the aircraft gate area are often needed to accommodate changing flight schedules and daily activity. The addition or modification of jetways to existing terminal buildings is typically done to adjust to changes in air travel demand and airline requirements. Such projects are intended to improve

[28] FAA AC 150/5320–6D, September 7, 1995, *Airport Pavement Design and Evaluation.*

[29] As recommended under FAA AC 150/5320–16, October 22, 1995, Airport Pavement Design for the Boeing 777 Airplane.

[30] Stabilized base layers as necessary for new pavements designed to accommodate jet aircraft weighting 100,000 pounds or more. FAA AC 150/5320–6D, September 7, 1995, Airport Pavement Design and Evaluation.

[31] Portland cement is a hydraulic cement made by heating a mixture of limestone and clay in a kiln and pulverizing the resulting material.

[32] FAA AC 150/5320–6D, September 7, 1995, Airport Pavement Design and Evaluation.

[33] EPA Report 460/3–91–02, November 1991, Nonroad Engine and Vehicle Emission Study—Report. Table 2–07 Emission Factors.

[34] EPA Report NR–005A, December 9, 1997, revised June 15, 1998, Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.

passenger terminal service by reducing passenger queuing and waiting times. Actions to approve or fund the upgrading of aircraft gate areas are presumed to conform provided such actions do not increase aircraft operations or introduce a larger class of aircraft at the airport.

5. Lighting Systems

Airport sponsors may need to install new lighting systems to maintain proper illumination of roadways, taxiways, runways, and parking areas. The data from the FAA surveys indicated that airport upgrading and installing of new lighting systems is done on an as-needed basis.

Minor mechanical work is required for the installation effort, followed by electrical work that does not require large off-road construction equipment. Assuming the installation requires the use of a pickup truck, a utility truck, an excavator, and a small generator, the construction will have to proceed continuously (eight hours a day, 20 days a month) for more than 17 months (1.4 years) in order to produce emissions near the level of 10 tons of NO_X. For the remaining criteria pollutants and precursors, construction on the order of several years would be required to approach the *de minimis* thresholds. Runway and other lighting systems can be installed in less than two weeks; therefore, project construction emissions are well below *de minimis* and presumed to conform.

6. Terminal and Concourse Upgrades

The opportunity to expand or upgrade terminals and concourses for improving passenger convenience or administrative use typically involves increasing or renovating the interior terminal space, including offices, hold rooms, concessions, restrooms, and gate areas. Terminal and concourse upgrades do not include new or upgraded heating, ventilation, and air conditioning systems, which are covered under a separate presumed to conform action (#7) because of their additional operating emissions.

Qualifying projects in this category do not include terminal replacement projects or have the effect of attracting more passengers. Nor do they have the effect of increasing the airport's ability to accommodate additional numbers or types of aircraft or to increase passenger loading on scheduled flights. Major terminal and/or concourse expansion projects that are designed to increase passenger usage or to support increased airfield capacity through new aircraft gates, runways, taxiways, etc. require an inventory of direct and indirect emissions to determine the further applicability of general conformity.

Construction vehicles and equipment are the dominant source of emissions when expanding or upgrading terminals. A conservative approach to quantifying construction emissions was used to determine the appropriate limits for this type of activity. The emission limits are presented in Table III–1 under "Terminal Upgrades" according to the *de minimis* thresholds.

A proposed terminal expansion project located in the FAA's Southern Region was used as the representative project. The terminal was proposed to have an additional footprint of 381,000 square feet. This proposed project was purposely selected to provide a conservative estimate of construction emissions normally released from this type airport improvement activity, even though this presumed to conform activity is limited to non-capacity enhancing projects. Emissions were quantified in this case from construction activities, including soil cement preparation, subgrade preparation, light and heavy demolition, cement base treatment, installation of the grade aggregate base, construction of the terminal, light and heavy utility work, and light and heavy earthwork. In addition, the proposed terminal expansion was assumed to occur within the same calendar year instead of the proposed schedule of seven years.

Construction emissions were calculated using prescribed EPA methodology incorporating the projected construction activity level, the number of construction vehicles and equipment, and industry-wide utilization rates. Emission factors for construction vehicles and equipment were taken from EPA databases for nonroad vehicles and engines,[35] and their updates.[36]

A proposed terminal/concourse expansion project is presumed to conform up to the square foot additions (footprint) of the project as determined by the most limiting pollutant (see Table III–1). The prescribed build-out limits per calendar year apply to all components of the terminal/concourse upgrade project according to the air quality status of the area in which the project is located.

7. New HVAC Systems, Upgrades, and Expansions

Upgrading and expanding heating, ventilation, and air conditioning (HVAC) systems are presumed to conform because any emission increases associated with improvements to airport heating and cooling systems are generally minor and well below *de minimis* thresholds.

Heating for airport terminal buildings is typically provided through a boiler system.[37] Boilers may be fueled by natural gas, coal (bituminous, sub-bituminous, or anthracite), No. 5 and No. 6 fuel oil (residual), No. 2 fuel oil (diesel), culm fuel, and liquefied petroleum gas (propane or butane). Pollutant emissions due to the operation of boilers vary with the fuel used. The emission factors for the various fuels are presented in Table III–2 below.

A new, upgraded, or expanded boiler system involves the installation of new equipment to replace or expand the capacity of existing boiler systems. Boilers can be very large and are sometimes delivered on flatbed semi-tractor trailer trucks and set in place by a crane. Table III–3 presents the construction emissions, primarily NO_X and CO, associated with the installation of a large boiler as described.

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[35] EPA Report 460/3–91–02, November 1991, Nonroad Engine and Vehicle Emission Study—Report.

[36] EPA Report NR–005A, December 9, 1997, revised June 15, 1998, Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.

[37] A boiler is an encased vessel that provides a means for combustion heat to be transferred into water until it becomes steam. The steam is then used to heat the building through a network of pipes. When water is boiled into steam its volume increases about 1,600 times, which is an efficient means for transferring heat for a process. HVACWebTech, Inc.

Table III-2
EMISSIONS FACTORS FOR BOILER FUELS

FUEL TYPE AND UNITS OF MEASURE	EMISSIONS INDICES (lb/unit of fuel measure)[1/]						TOTAL EMISSIONS PER UNIT OF FUEL (lb/unit of fuel measure)[1/]
	CO	NO_X	PM_{10}	$PM_{2.5}$	SO_2	HC	
Coal							
Bituminous Coal, short ton	18.0	33 0	146.78	111 60	85 54	1.30	396 22
Subbituminous Coal, short ton	6 0	24.0	134.38	102 20	75.60	0.11	342 29
Anthracite Coal, short ton	0 6	18.0	69.58	31.40	34.72	0 07	154 37
Culm Fuel, short ton	0.6	1.8	4 80	2 16	2.90	0.07	12.33
Fuel Oil							
Fuel Oil No 6, 1000 gallons	5 01	55 08	26.79	19.53	488 21	1.60	596 21
Fuel Oil No. 5, 1000 gallons	5 01	55.08	8 35	6 08	488.21	1 60	564.32
Fuel Oil No. 2, 1000 gallons	5.01	24 20	1.26	0.46	48 82	0 56	80.31
Natural Gas, 1000 ft^3	56.50	158.92	4 24	4.24	0 35	6 36	230.60
Liquefied Petroleum Gas							
Butane, 1000 gallons	3 34	20.86	0.58	0 58	0.04	0 58	26 00
Propane, 1000 gallons	3.34	19.19	0 58	0.58	0 05	0.50	24 25

Notes: Depending on the fuel, the value for "HC" could be total hydrocarbons (THC), total organic compounds (TOC), or total non-methane organic compounds (TNMOC).

1/ lb is pounds, where emissions indices are given in lb per unit of fuel measurement. The units used for each fuel are given in column "Fuel Type and Units of Measure."

Source: FAA, Emissions and Dispersion Modeling System (EDMS) v5.0, 2007, based on EPA's AP-42.

Table III-3
CONSTRUCTION EMISSIONS FOR BOILER INSTALLATION
(Tons per installation)

SO_2	NO_x	PM_{10}	$PM_{2.5}$	CO	HC
0.00123	0.01347	0.00155	0.00155	0.00481	0.00144

Note: HC is hydrocarbons
Source: Airtron Heating and Air Conditioning, Columbus, Ohio, 2002
EPA Report 460/3-91-02, November 1991, *Nonroad Engine and Vehicle Emission Study – Report.*

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Airport terminals consume energy for heat at a higher rate than most public buildings. The reasons for this include the open areas surrounding many airports, heat loss from the movement of people and baggage in and out of buildings, and the usual 24-hour operation of facilities. The consumption of energy to generate heat is also dependent upon the design of the terminal building. For instance, many airport terminals are designed with exterior glass walls or incorporate design, art, and architectural treatments that reflect local customs and community history.[38] The many variations of airport terminal design, including geographical location, make it impractical to identify the "typical terminal building" for purposes of determining total emissions. Therefore, the presumption of conformity could not be based on the characteristics of the building, but rather on the volume of fuel consumed.

As discussed, emissions resulting from the operation of boilers depend on the type of fuel powering the boiler system. Emissions from the use of propane, butane, and natural gas are of concern in ozone nonattainment and maintenance areas since the primary pollutant from combustion of these fuels is NO_X, a precursor to ozone formation. Hydrocarbons (HCs) are another precursor to ozone but they are relatively low for these fuel types in comparison to NO_X emissions. The primary pollutant from the combustion of fuel oil (No. 2 diesel, and No. 5 and No. 6 residual) is SO_2, while particulate matter is the primary pollutant from the combustion of coal, including culm fuel. Therefore, NO_X, SO_2, $PM_{2.5}$, and PM_{10} are the most likely limiting pollutants for the operation of boiler systems at airports.

Table III–4 below presents maximum annual fuel throughput for heating systems and boilers by fuel type at levels that do not equal or exceed the *de minimis* thresholds. The FAA *Emissions and Dispersion Modeling System (EDMS)* was used to perform the calculations. EDMS emission factors are conservatively based on EPA's AP–42 emissions quantification methodology.[39]

The analysis shows, for example, that an airport located in a severe nonattainment area for ozone, with a *de minimis* NO_X threshold of 25 tons per year, could operate new or improved boilers using up to 5.05 million cubic meters of natural gas annually, which is sufficient to heat a building of approximately 210,000 square feet.[40] NO_X emissions in a severe ozone nonattainment area would be limited to 907,000 gallons of No. 6 fuel oil (residual), 2,065,000 gallons of No. 2 fuel oil (diesel), 2,603,000 gallons of propane, 1,515 short tons of bituminous coal, or 2,777 short tons of anthracite coal on an annual basis.

The installation, upgrade, or expansion of an airport HVAC system that requires a permit under new source review (NSR) or prevention of significant deterioration programs is exempt from a general conformity determination.[41] The inclusion of airport boiler installations/modifications as a presumed to conform activity does not affect existing or future requirements of Federal, State or local air quality operating permit programs. Proper compliance with all applicable environmental regulations must be maintained.

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[38] FAA AC 150/5360–13, April 22, 1988, *Planning and Design Guidelines for Airport Terminal Facilities.*

[39] FAA, 2007, *Emissions and Dispersion Modeling System EDMS Version 5.0.*

[40] Assuming a 100,000 sq. ft. one-floor building would require approximately 2.4 million cubic meters of natural gas to heat the building, annually; based on the industry standard heat value, 1,000 BTU per cubic foot of natural gas, annually [Airtron Heating and Air Conditioning, Columbus, Ohio].

[41] 40 CFR part 93, § 93.153(d)(1).

Table III-4

PRESUMED TO CONFORM LIMITS FOR SELECTED BOILER PROJECTS (PAGE 1 OF 2)

NONATTAINMENT AND MAINTENANCE AREA CLASSIFICATIONS						PRESUMED TO CONFORM AIRPORT PROJECTS				
						Heating System/Boiler – Maximum Annual Fuel Throughput for *De Minimis* Emissions [1/]				
Classification Characteristics and Pollutants					TPY [2/]	Anthracite Coal (short tons)	Bituminous Coal (short tons)	Sub-bituminous Coal (short tons)	Culm Fuel (short tons)	Fuel Oil No. 2 (diesel) (1000 gallons)
NONATTAINMENT	OZONE	Serious		NO_x	50	5,553	3,029	4,166	55,539	4,131
				VOC	50	1,428,502	76,919	909,046	1,428,502	179,911
		Severe		NO_x	25	2,777	1,515	2,082	27,762	2,065
				VOC	25	714,230	38,459	454,510	714,224	89,953
		Extreme		NO_x	10	1,110	605	832	11,096	825
				VOC	10	285,658	15,382	181,783	285,658	35,977
		Marginal & Moderate	Inside OTR	NO_x	100	11,109	6,059	8,332	111,095	8,263
				VOC	50	1,428,502	76,919	909,046	1,428,502	179,911
			Outside OTR	NO_x	100	11,109	6,059	8,332	111,095	8,263
				VOC	100	2,857,088	153,843	1,818,146	2,857,083	359,832
	CO				100	333,315	11,110	33,332	333,315	39,940
	SO_2				100	5,762	2,338	2,646	68,964	4,097
	NO_2				100	14,813	8,080	11,109	148,133	11,017
	PM_{10}		Moderate		100	2,875	1,362	1,488	41,665	159,765
			Serious		70	2,012	953	1,042	29,165	111,834
	$PM_{2.5}$				100	2,875	1,362	1,488	41,665	159,765
MAINTENANCE	OZONE	NO_x			100	11,109	6,059	8,332	111,095	8,263
		VOC	Inside OTR		50	1,428,502	76,919	909,046	1,428,502	179,911
			Outside OTR		100	2,857,088	153,843	1,818,146	2,857,083	359,832
	CO				100	333,315	11,110	33,332	333,315	39,940
	SO_2				100	5,762	2,338	2,646	68,964	4,097
	NO_2				100	14,813	8,080	11,109	148,133	11,017
	PM_{10}				100	2,875	1,362	1,488	41,665	159,765
	$PM_{2.5}$				100	2,875	1,362	1,488	41,665	159,765

Notes: OTR is the Ozone Transport Region, which under CAA Amendments, Section 184(a), includes the States of CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia.

1/ Maximum annual volume of fuel necessary for *de minimis* emissions accounts for the construction emissions given in Table III-3.

2/ TPY is short tons per year of emissions representing the *de minimis* thresholds.

Table III-4
PRESUMED TO CONFORM LIMITS FOR SELECTED BOILER PROJECTS
(PAGE 2 OF 2)

NONATTAINMENT AND MAINTENANCE AREA CLASSIFICATIONS					PRESUMED TO CONFORM AIRPORT PROJECTS				
					Heater System/Boiler – Maximum Annual Fuel Throughput for *De Minimis* Emissions [1/]				
Classification Characteristics and Pollutants				TPY [2/]	Fuel Oil No. 5 (1000 gallons)	Fuel Oil No. 6 (1000 gallons)	LPG: Butane (1000 gallons)	LPG: Propane (1000 gallons)	Natural Gas (1000 ft^3)
NONATTAINMENT	OZONE	Serious	NO_x	50	1,815	1,815	4,792	5,208	353,464
			VOC	50	62,309	62,309	171,172	199,701	8,898,731
		Severe	NO_x	25	907	907	2,395	2,603	178,268
			VOC	25	31,154	31,154	85,584	99,848	4,449,224
		Extreme	NO_x	10	363	363	957	1,041	71,265
			VOC	10	12,460	12,460	34,230	39,934	1,779,471
		Marginal & Moderate, Inside OTR	NO_x	100	3,631	3,631	9,585	10,418	713,427
			VOC	50	62,309	62,309	171,172	199,701	8,898,731
		Marginal & Moderate, Outside OTR	NO_x	100	3,631	3,631	9,585	10,418	713,427
			VOC	100	124,622	124,622	342,355	399,414	17,797,956
	CO			100	39,940	39,940	55,730	63,063	2,002,165
	SO_2			100	410	410	4,437,918	3,698,260	320,363,637
	NO_2			100	4,841	4,841	12,780	13,891	951,271
	PM_{10}	Moderate		100	23,965	7,475	342,354	342,354	26,696,758
		Serious		70	16,775	5,232	239,644	239,645	18,687,391
	$PM_{2.5}$			100	23,965	7,475	342,354	342,354	26,696,758
MAINTENANCE	OZONE	NO_x		100	3,631	3,631	9,585	10,418	713,427
		VOC	Inside OTR	50	62,309	62,309	171,172	199,701	8,898,731
			Outside OTR	100	124,622	124,622	342,355	399,414	17,797,956
	CO			100	39,940	39,940	55,730	63,063	2,002,165
	SO_2			100	410	410	4,437,918	3,698,260	320,363,637
	NO_2			100	4,841	4,841	12,780	13,891	951,271
	PM_{10}			100	23,965	7,475	342,354	342,354	26,696,758
	$PM_{2.5}$			100	23,965	7,475	342,354	342,354	26,696,758

Notes: OTR is the Ozone Transport Region, which under CAA Amendments, Section 184(a), includes the States of CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia.

1/ Maximum annual volume of fuel necessary for *de minimis* emissions accounts for the construction emissions given in Table III-3.

2/ TPY is short tons per year of emissions representing the *de minimis* thresholds..

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8. Airport Security

Based on collected project information and additional agency experience with airport security actions following the events of September 11, 2001, the FAA has determined that dedicated security-related airport projects qualify as presumed to conform actions, including modification of existing terminals with luggage and passenger scanning devices, addition of camera surveillance, bolstering of airport security fencing, and reinforcement of airport access control. In most cases, the installation of security equipment and upgraded

operations in existing facilities will not result in the generation of air emissions. If the construction and installation of some dedicated security projects do cause emissions, these emissions will be minor and well below the *de minimis* thresholds.

Security requirements also may dictate that parking spaces close to terminal buildings be eliminated.[42] As a result, FAA actions associated with the expansion of parking facilities to compensate for lost close-in parking are presumed to conform provided these actions are limited to a one-for-one replacement of parking capacity. Generally, the relocation of parking spaces away from the terminal building will reduce vehicle miles traveled (VMT) on airport property, resulting in an emissions decrease.

It is important to note that this category of presumed to conform actions is separate from exempt Federal actions under the Rule that are part of a continuing response to an emergency or disaster.[43] Agency use of the emergency exemption is limited in time and must involve overriding concerns for public health and welfare, national security interests, and foreign policy commitments.[44]

9. Airport Safety

Airport projects relating to airport safety include actions specific to the Runway Safety Area (RSA). FAA regulations specify the requirements for a RSA, which is defined as the surface area that surrounds and extends beyond the runway ends that is required for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway.[45] RSA improvements are presumed to conform unless a new road or the relocation of a road is required.

In addition to a safe airfield, airport projects to build, expand, replace, upgrade, or equip a required Aircraft Rescue and Firefighting Facility (ARFF) are presumed to conform. These facilities are relatively small airport projects and must be provided by the airport to ensure airport and passenger safety. Airports must meet ARFF requirements as specified under 14 CFR 139.317, and are responsible for upgrading an ARFF if there is an increase in the average daily departures or the length of an air carrier aircraft.[46]

10. Airport Maintenance Facilities

Airport maintenance facilities house the equipment necessary to run, service, and maintain the airport environs. These facilities can include vehicle service centers, fueling stations, and storage areas for snow removal and maintenance equipment. FAA actions associated with upgrading airport-owned maintenance facilities are presumed to conform based on the fact that these facilities typically require only minor construction. However, the installation or upgrading of aircraft maintenance facilities (typically owned by an airline or charter company) that are used to paint or maintain aircraft at an airport are not considered presumed to conform because aircraft maintenance facilities may cause an increase in flights to meet maintenance schedules.

11. Airport Signage

Airport sponsors place signs throughout the airport property to direct passengers, employees, and vendors to terminals, parking lots, rental car areas, maintenance areas, etc. In addition, airports provide a network of signs to direct aircraft and vehicles on the airfield. Airport signage is often electrified for illumination at night and for other times of limited visibility. In general, airport signage installation can be completed in a matter of days or weeks. It would require more than a year of continuous installation to exceed the 25-ton threshold for NO_X. Therefore, airport signage installation projects are presumed to conformed.

12. Commercial Vehicle Staging Areas

Commercial vehicle staging areas at airports serve as temporary holding areas for taxicabs, limousines, and other commercial vehicles. Such areas reduce the need to idle at the terminal curb front and help to decongest the terminal roadways. Airports that employ commercial vehicle staging areas may enforce specific idling restrictions or engine-off mandates to further reduce air quality impacts. Generally, the use of commercial vehicle staging areas is an emissions reduction strategy because the alternative inherently creates more emissions from increased traffic and congestion at the terminal.

A Federal action to develop a commercial vehicle staging area for purposes of relieving airport traffic congestion is presumed to conform based on the criteria provided in Table III–1 for a "Commercial Vehicle Staging Area." Providing a commercial vehicle staging area does not cause an increase in the volume of vehicles on regional roadways and impacts air quality only through the use of construction equipment to pave the staging area. Construction emissions are primarily comprised of NO_X and CO.

The quantity of emissions associated with the construction of an asphalt taxicab staging area was based on a construction design for a regional asphalt roadway. The calculation of emissions included activities such as excavation, preparation of the subgrade, adding a base layer of stone, fine grading, and paving. The paving process included the application of a tack coat, wearing course, and the final seal coat. The type and use of construction equipment was determined based on information obtained from the R.S. *Means' Means Building Construction Cost Data*, and the *State of Ohio Department of Transportation's* Manual of Procedures for *Flexible Pavement Construction and Pavement Design and Rehabilitation Manual*. Rated horsepower and load factors for each construction unit was obtained from the EPA's *Nonroad Engine and Vehicle Emission Study-Report and Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling*, and the *Caterpillar Performance Handbook*.

Emission factors were obtained from the EPA's *Nonroad Engine and Vehicle Emission Study-Report*.

The acreage that could be paved without equaling or exceeding the *de minimis* thresholds for each applicable nonattainment or maintenance category was calculated and summarized in Table III–1. For instance, an airport located within an area designated as severe nonattainment for ozone, which limits net project emissions to an annual rate of 25 tons of NO_X, is limited to a commercial vehicle staging area of about 13 acres, or 561,584 square feet, which results in 2.35 tons of VOC emissions. Paving of approximately 137 acres is required to cause emissions of VOC of nearly 25 tons, as established for a severe nonattainment area for ozone. In order to approach the 100 ton *de minimis* thresholds for other criteria pollutants, paving areas of approximately 140 acres would be required for CO, 556 acres for SO_2, and more than 595 acres for PM_{10}. Therefore, NO_X is the limiting pollutant for paving projects at airports and emissions of VOC, CO, SO_2, and PM_{10} are considerably less in comparison to NO_X.

13. Low-Emission Technology and Alternative Fuel Vehicles

A growing number of airports are interested in new technology and vehicle systems to reduce stationary and mobile emissions. Based on agency and

[42] FAA Aviation Security Directive issued February 2002.

[43] 40 CFR Part 93, § 93.153(e).

[44] Ibid.

[45] FAA AC 150/5300–13, September 29, 1989, Airport Design.

[46] Per index under 14 CFR Part 139, § 139.319(a)

airport low-emission programs over the past several years, which provide extensive data and documentation to verify the emission reduction benefits of new low-emission technology, these activities are presumed to conform.

Activities that are presumed to conform include the replacement, substitution, or conversion of conventional fuel vehicles (gasoline, diesel) to vehicles using alternative or clean conventional fuel technology. Qualified activities also encompass airport low-emission infrastructure improvements and the use of refueling or recharging stations needed to service airport low-emission vehicles.

All low-emission activities funded through the FAA Voluntary Airport Low Emission Program (VALE) or that are required as part of environmental mitigation are presumed to conform.[47] The VALE program requires that vehicles purchased under the program meet specific low-emission standards and that these vehicles and other program equipment remain at the airport for their useful life.

14. Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations

The preamble to the General Conformity Rule[48] states that:

"In order to illustrate and clarify that the *de minimis* levels exempt certain types of Federal actions, several *de minimis* exemptions are listed in 51.853(c)(2). There are too many Federal actions that are *de minimis* to completely list in either the rule or this preamble."

As an illustration of exempt actions, EPA states in the preamble that "Air traffic control activities and adopting approach, departure and enroute procedures for air operations" are among other actions that are *de minimis* (preamble, p. 63229, I(2)) and should be exempt from the Rule. Because air traffic control activities are cited in the preamble but not in the Rule itself, the FAA believes that it is prudent to document these activities as presumed to conform.

Air traffic control activities are defined as actions that promote the safe, orderly, and expeditious flow of aircraft traffic, including airport, approach, departure, and enroute air traffic control. Airspace and air traffic actions (e.g., changes in routes, flight patterns, and arrival and departure procedures) are implemented to enhance safety and increase the efficient use of airspace by reducing congestion, balancing controller workload, and improving coordination between controllers handling existing air traffic, among other things.

Project-related aircraft emissions released into the atmosphere above the inversion base for pollutant containment, commonly referred to as the "mixing height," (generally 3,000 ft. above ground level) do not have an effect on pollution concentrations at ground level.[49] [50] Therefore, air traffic control actions above the mixing height are presumed to conform.

In addition, the results of FAA research on mixing heights indicate that changes in air traffic procedures above 1,500 ft. AGL and below the mixing height would have little if any effect on emissions and ground concentrations.[51] Such actions in the vicinity of the airport are tightly constrained by runway alignment, safety, aircraft performance, weather conditions, terrain, and vertical obstructions.[52] Accordingly, air traffic actions below the mixing height are also presumed to conform when modifications to routes and procedures are designed to enhance operational efficiency (i.e., to reduce delay), increase fuel efficiency, or reduce community noise impacts by means of engine thrust reductions. Other air traffic procedures and system enhancements that are presumed to conform include actions that have no effect on air emissions or result in air quality improvements, such as gate hold procedures which reduce queuing, idling, and flight delays.

In FAA's experience, airport capacity improvements result from market forces in today's deregulated environment that determine where airlines fly and how often. These forces lead, for example, to airport planning and development of new runway or terminal projects, which are large actions that are not presumed to conform and must be evaluated further. Limited refinements to terminal air traffic procedures below the mixing height typically reduce local emissions as a result of improved efficiencies, reduced ground delays, and noise mitigation.

15. Routine Installation and Operation of Airport Navigation Aids

Aviation navigation aids represent the facilities and equipment used for communications, navigation, and surveillance (CNS) systems.[53] The use and maintenance of CNS systems is essential to safe air commerce and national security.[54] Airports are required to establish adequate maintenance systems for navigational aid facilities to the level of performance achieved at original commission.[55]

Similar to the previous presumed to conform action for air traffic control activities, EPA states in the preamble that "routine installation and operation of aviation (and maritime) navigation aids" are below *de minimis* and should be considered exempt actions.[56] Because these activities are cited in the preamble but not in the Rule itself, the FAA believes that it is prudent to document these activities as presumed to conform.

The routine installation, in-kind replacement, and maintenance of navigational aids (e.g., Air Traffic Control Towers (ATCT), Instrument Landing Systems (ILS), Approach Light Systems (ALS)) are presumed to conform because these activities will not generate emissions that exceed *de minimis* levels. Moreover, emissions generated by construction equipment and maintenance vehicles used to transport workers and equipment to CNS system sites are negligible considering the temporary nature of construction and maintenance activities and the limited number of vehicles involved.

If the installation of new or upgraded navigational aids for improved safety and efficiency also increases the capacity of the airport or changes the operational environment of the airport, these CNS activities are not presumed to conform.[57]

Also presumed to conform are CNS emergency or standby generators powered by natural gas or propane. These generators provide electric power in case of primary power failure and are operated intermittently, with an estimated total time of operation of less than 100 hours per year. Because of the infrequent use and small size (135 kilowatts or less) of the engine generators and the use of clean-burning

[47] FAA Order 5100.38C, Airport Improvement Program Handbook, June 2005, §§ 580, 585.

[48] 58 Fed. Reg. 63229 (Nov. 30, 1993).

[49] EPA Report, Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources [420R–92–009], section 5.2.2., 1992.

[50] Realistic Mixing Depths for Above Ground Aircraft Emissions, Journal of the Air Pollution Control Association, Vol. 25, No. 10, Howard M. Segal, Boeing, 1975.

[51] Report on "Consideration of Air Quality Impacts by Airplane Operations At or Above 3,000 feet AGL," FAA–AEE–00–01, September 2000, p. 5.

[52] FAA Advisory Circulars No. 25–13 and No. 91–53A describe requirements that must be met when using reduced power for takeoff.

[53] 14 CFR 171.1–171.51.

[54] 14 CFR 169.1(a)

[55] 14 CFR Part 171.

[56] 58 FR 63229, I(6) (Nov. 30, 1993).

[57] Consistent with FAA Order 1050.1E, Section 401 "Actions Normally Requiring an Environmental Assessment".

fuels, the engine generators produce negligible air emissions.

IV. How To Apply Presumed To Conform Actions

The qualifying project categories discussed in the preceding section may be referred to as the FAA "presumed to conform list." The analysis for presumed to conform actions is considered representative of the vast majority of possible airport projects within each category. However, FAA employees must consider the appropriateness of applying this list, particularly how the proposed project compares to the presumed to conform category of projects.[58]

As authorized under the CAA, the list provides an additional way for the FAA to improve its environmental program management while still ensuring that agency air quality goals and requirements are met. Use of the list will reduce review times, eliminate unnecessary paperwork, clarify analytical requirements for all project actions, and insure that the proper level of documentation is applied in each case. Moreover, in some instances, the presumed to conform list can provide another method that the FAA can use to demonstrate conformity with an applicable SIP.

As part of the process of developing the list of actions presumed to conform under 40 CFR 93.153(f), the FAA, in close consultation with the EPA, has exercised its discretion to establish separate procedures.[59] FAA established its own procedures for including presumed to conform actions in total emissions in determining applicability and conformity to avoid segmentation of projects for conformity analysis when emissions are reasonably foreseeable. When applying the presumed to conform list, the FAA determines whether it is dealing with proposed presumed to conform actions that represent one or more "single actions" or a "combined action." The FAA also determines whether the combined action involves multiple connected presumed to conform actions or presumed to conform actions that are part of a larger project being evaluated under the environmental review requirements of the National Environmental Policy Act (NEPA). Below is a description of the different actions and procedures.

Single Action. A single action is defined as a presumed to conform action that is not connected or dependent on other actions and which is determined to have independent utility.[60] For such actions, no general conformity evaluation or applicability analysis is required and agency officials may simply document that the project action is considered presumed to conform on the basis of this Notice and the applicable project category.

Using the analysis and documentation for this Notice meets a major intent of presumed to conform—namely to reduce the analysis burden for actions that have little or no direct or indirect emissions. By analyzing each project category in the presumed to conform list and reporting the findings in the preceding section, the FAA has shown that the resulting emissions from each presumed to conform action would typically be below the applicable *de minimis* thresholds.

Combined Action. A combined action is defined as either: (1) Multiple presumed to conform actions that are connected to each other; or (2) one or more presumed to conform actions that are connected to one or more non-presumed to conform actions being evaluated under the environmental review requirements of NEPA (e.g., EA or EIS). The Council on Environmental Quality defines "connected actions" as actions that are closely related involving, for example, interdependent parts of a larger action, dependence on a larger action for justification, or dependence on other actions taken previously or simultaneously.[61]

Where there is a combined action, then only one action specified on the presumed to conform list may be excluded in calculating total direct and indirect emissions. The emissions from all the other actions that are not otherwise exempt must be calculated to determine that total emissions from the remaining actions.[62] For example, the FAA may undertake a project with several connected actions that must be analyzed under NEPA. Several of those actions may individually be listed on the presumed to conform list because those actions taken alone would typically have emissions below *de minimis* levels. To determine whether such a project requires a conformity determination, FAA excludes one presumed to conform action and then prepares an applicability analysis for the remaining actions. In other words, FAA determines whether the emissions from the combination of actions, less one presumed to conform action, equals or exceed *de minimis* levels or assists in demonstrating conformity.

FAA procedures for combined actions permit FAA to exclude the emissions from one presumed to conform action and to prepare an applicability analysis, and a conformity determination if necessary, based upon the total direct and indirect emissions of the actions that are not otherwise exempt.[63] Thus, in a combined action, the emissions from one presumed to conform action may be excluded from the calculation of total project emissions. The process could show that either the combined action (minus the one excluded presumed to conform action) would equal or exceed *de minimis* thresholds and thus trigger a conformity determination, or that the combined action (minus the one excluded presumed to conform action) is below *de minimis* thresholds with no further action required. Consequently, the allowance to exclude one presumed to conform action could make a difference as to whether a conformity determination is needed or whether conformity is demonstrated. FAA officials have the authority and responsibility to decide which presumed to conform action is excluded if more than one is present in a combined action.[64]

The FAA has determined as a matter of policy to implement the presumed to conform list with respect to combined actions by balancing considerations about project segmentation[65], connected actions under NEPA[66], and the permitted exclusion of emissions attributable to presumed to conform actions under the Rule. With regard to

[58] The list must be used carefully because "[w]here an action otherwise presumed to conform under paragraph (f) of this section * * * does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of § 93.150 and §§ 93. 155 through 93.160 shall apply for the Federal action." See 40 CFR § 93.153(j).

[59] It is a fair inference from EPA's April 9, 2007 letter to FAA that the EPA interprets 40 CFR § 93.153(f) to permit the FAA to define total direct and indirect emissions to include presumed to conform actions in certain circumstances, notwithstanding 40 CFR § 93.152.

[60] 40 CFR 1506.1(c)(1) and 1508.25(a), Council on Environmental Quality, Regulations for Implementing the Procedural Provisions of NEPA.

[61] 40 CFR 1508.25(1).

[62] An allowance to this provision is discussed in the following paragraph.

[63] Emissions from exempt actions are excluded in accordance with 40 CFR 93.152.

[64] Requirements and allowances for combined actions are based on interagency communications with EPA.

[65] In the preamble to the General Conformity Rule, EPA decided not to adopt its initial proposal to permit Federal agencies to use the NEPA concept of tiering and analyze actions in a staged manner in conducting conformity analyses. EPA explained, among other things: "[T]iering could cause the segmentation of projects for conformity analysis, which might provide an overall inaccurate estimate of emissions. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule." (58 FR 63240).

[66] 40 CFR 1508.7.

the latter, the Rule states in 93.152 under Definitions: "The portion of emissions which are exempt or presumed to conform under Section 93.153(c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." Likewise, as stated in the preamble (58 FR 63233): "The final rule requires the inclusion of the total direct and indirect emissions in the applicability and conformity determinations, except the portion of emissions which are exempt or presumed to conform* * *"[67] The FAA applies this definition to exclude emissions for single and multiple presumed to conform actions that are not connected to one another. FAA procedures for combined actions offer a reasonable approach by placing a more conservative limit on the permitted exclusion of presumed to conform emissions than 40 CFR 93.152.

Documentation. Documentation requirements for combined actions are greater typically than for single actions. On some combined actions, the FAA requires that presumed to conform actions be analyzed and documented by means of an emissions inventory using the FAA EDMS model and related procedures.[68] This standard modeling methodology is project-specific and more refined than the quantification of emissions in this Notice and therefore offers greater confirmation in some cases that the applicable emissions will not equal or exceed the *de minimis* thresholds.

Specifically, standard modeling methodology must be used if the project includes: (1) One or more presumed to conform actions that are connected to non-presumed to conform actions which are being evaluated under the environmental review requirements of NEPA; or (2) two or more presumed to conform actions are involved which are not supported by additional quantification in the Notice (see below). In these cases, each presumed to conform action must be modeled and inventoried in the same manner and to the same extent as non-presumed to conform actions. Moreover, presumed to conform actions must be listed as a separate line item in the emissions inventory and clearly explained and presented in all related study documentation.

Consistent with the goal of reducing the analysis burden for presumed to conform actions, the Notice may be used in some instances to document presumed to conform actions in lieu of the standard modeling methodology. Specifically, the Notice may be used if the project is a single action or if it is limited to multiple presumed to conform actions that are supported in the Notice by additional quantification. Presumed to conform actions or categories with additional quantification (e.g., data tables) are: Pavement markings; pavement monitoring systems; non-runway pavement work; lighting systems; terminal and concourse upgrades; new HVAC systems, upgrades, and expansions; airport signage; commercial vehicle staging areas; and low-emission technology and alternative fuel vehicles.[69] Also, the Notice may be used if all but one of the project's multiple presumed to conform actions are supported by additional quantification and the FAA excludes, as allowed, the emissions from the one presumed to conform action that is not supported by additional quantification.

Regional Significance

FAA employees must also reflect that they have considered potential regional significance, that is, whether the total direct and indirect emissions of the pollutants from each presumed to conform action represent 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant under 40 CFR 93.153(i).[70] If project emissions are regionally significant on this basis, the FAA would be required to prepare a conformity analysis and determination for a presumed to conform Federal action.

As the FAA indicated in its Draft Notice, strong evidence indicates that presumed to conform actions are not likely to be regionally significant.[71] However, the FAA has decided to defer action on this aspect of its Draft Notice based upon consultation with the EPA.

Issued in Washington, DC on July 24, 2007.

Charles R. Everett, Jr.,

Manager, Planning and Environmental Division, Office of the Associate Administrator for Airports.

[FR Doc. 07–3695 Filed 7–25–07; 12:19 pm]

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[67] EPA gives as an example a Federal action that includes construction of a new industrial boiler project, that is exempt, and a separate office building. The emissions from the hypothetical boiler exceed de minimis levels however it is exempt and so the emissions are excluded. The emissions from the office building alone are below de minimis levels. As a result, the action as a whole does not need a conformity determination. (58 Fed. Reg. 63233).

[68] The primary source of agency air quality procedures and analysis requirements is the FAA Air Quality Handbook entitled *Air Quality Procedures for Civilian Airports and Air Force Bases*, FAA and USAF, April 1997.

[69] Documentation for low-emission technology and alternative fuel vehicles may be based on the findings of the FAA VALE program and its preceding pilot program (ILEAV).

[70] This section provides that actions specified by individual federal agencies that have met applicable criteria and procedures are presumed to conform "except as provided in paragraph (j) of this section." Paragraph (j) states: "Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action * * * that action shall not be presumed to conform and the requirements [for a conformity analysis and determination] shall apply for the Federal action."

[71] The FAA *Air Quality Handbook* states that an airport project that is presumed to conform is unlikely to have emission levels that are regionally significant (*Air Quality Procedures for Civilian Airports and Air Force Bases*, FAA and USAF, April 1997). This is because, based on the highest *de minimis* threshold level (100 tons per year), in order for an action's net emissions to represent 10 percent or more of a maintenance or nonattainment area's total emissions of a particular pollutant, the area's total emissions inventory for any pollutant must be less than 1,000 tons, which is unlikely.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–28797]

Agency Information Collection Activities: Notice of Request for Reinstatement of a Previously Approved Collection for Which Approval Has Expired

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a reinstatement of a previously approved collection for which approval has expired. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 11, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 29, 2007.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of

electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–28797.

FOR FURTHER INFORMATION CONTACT: Heather Contrino, 202–366–5060, or Ralph Gillman, 202–366–5042, Office of Highway Policy Information, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Household Travel Survey.

OMB Control #: 2125–0545.

Background: The collection of passenger travel data is authorized in Title 23, Section 502, which authorizes the DOT to engage in studies to collect data for planning future highway programs. The 2008 National Household Travel Survey (NHTS) will provide an updated benchmark of travel activity and a measure of the impact of household travel behavior on system performance including safety, accessibility, economic factors, and congestion. This continuity is important in identifying, assessing, and forecasting travel trends. The many changes in travel and the related social patterns point to the need for a 2008 NHTS. Continuing changes in household structure, commuting levels and patterns, the location of households and workplaces, and increases in the mobility of the older population, as well as issues of air quality and traffic congestion, have all resulted in significant changes in travel in recent years. Historically, FHWA has had the responsibility for the administration of the NHTS; however, FHWA coordinates with other agencies within the DOT on information needs and program applications. The Bureau of Transportation Statistics (BTS), National Highway Traffic Safety Administration (NHTSA), and the Federal Transit Administration (FTA) have provided supplemental funding in past NHTS program activities. In addition, several organizations outside DOT rely on the NHTS for transportation information relating to health (Centers for Disease Control), energy consumption (Energy Information Administration), and emergency planning (Department of Homeland Security). The DOT has a continuing need for current and improved data to determine the nature and extent of present travel needs and to plan for meeting the nation's travel needs of the future. Specifically, data is needed to:

- Examine the availability and use of transportation to various population groups, including those whose mobility has historically been lower than that of the general population, such as the elderly, low-income, people of color, and new immigrants;
- Identify factors affecting the use of private vehicles and other means of transportation as they relate to trip purposes including travel to work, school, shopping, medical care, other personal business, social and recreational travel;
- Forecast trends in highway transportation in light of projected demographic changes;
- Obtain the public's response to changes in transportation systems and services;
- Evaluate factors relating to the safety of the surface transportation system;
- Provide data for the evaluation of the impacts of various policy initiatives; and
- Provide cost-effective information that supports transportation planning and decision making by Federal, State, and local governments.

The DOT uses the data to analyze the amount and nature of household travel, the relationship between socioeconomic characteristics and travel patterns, and trends in passenger travel. Because demographic information is collected on each person and each household surveyed in the NHTS, the dataset is excellent for describing travel behavior of population groups. The transportation community has seen the influence of changes in travel behavior on the amount and type of travel demand, including the increasing participation of women in the workforce, trip chaining for other purposes as part of the work journey, an increase in single-occupant vehicles, increased development of the outer suburbs and exurbs, and changes in household structure. NHTS is also critical in assessing emerging travel roles of older populations and how this is changing over time, as the older cohort is more and more composed of those who have grown up driving. Understanding household travel today means understanding the complexity and variety of travel needs under these changing conditions. As our society addresses air quality and congestion issues, it is vital that the various trends be understood along with their implications for the different segments of the population.

Respondents: Approximately 25,000 households will complete the survey. The survey households will be selected using random digit dialing (RDD). The NHTS is a two-stage study. In the first stage, households are contacted via computer assisted telephone interviewing (CATI) to collect basic information about the household and its vehicles. During this initial contact, households are recruited to participate in the diary phase (second stage of the study). Each household is assigned a specific travel day and asked to record details about each trip taken on that day. The stage two trip information is obtained via computer assisted telephone interviewing (CATI).

Frequency: The NHTS has been conducted by the DOT every 5–7 years since 1969. The 2008 NHTS will be conducted during calendar year 2008.

Estimated Average Burden per Response: The estimated burden per household averages 68 minutes, which includes interviewing an average of 2.5 persons per household. The burden per person averages 20 minutes for the interview and another 7 minutes for keeping the diary.

Estimated Total Annual Burden Hours: The estimated total annual burden hours are 28,333.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 23, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–14643 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maintenance and Repair Reimbursement Pilot Program

AGENCY: Maritime Administration, Department of Transportation

ACTION: Notice of extension of application deadline.

SUMMARY: The Maritime Administration is hereby giving notice that the closing date for filing applications to enroll in the Maintenance and Repair Reimbursement Pilot Program is extended until October 30, 2007. The notice announcing the initial application deadline was published in

the **Federal Register** on July 2, 2007 (72 FR 36103).

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–3511; or e-mail: *Jean.McKeever@dot.gov*.

SUPPLEMENTARY INFORMATION: Section 3517 of the National Defense Authorization Act for fiscal year 2007 (Pub. L. 109–163) requires a person who is awarded a Maritime Security Program ("MSP") agreement to also enter into an agreement with the Maritime Administration to perform maintenance and repair ("M&R") work in United States shipyards as a condition of the MSP award. The Maritime Administration's M&R regulations do not apply the M&R condition to contractors who have already been awarded an M&R agreement. Thus, the Maritime Administration's M&R regulations make the M&R obligation mandatory on new awardees, including transferees, of MSP agreements, and voluntary for existing MSP contractors.

The John Warner National Defense Authorization Act for Fiscal Year 2007, (Pub. L. 109–364) grants a priority, during times of insufficient appropriations, in allocation of MSP payments to MSP contractors that have entered into M&R agreements. The M&R regulations were published in the **Federal Register** on February 6, 2007 (72 FR 5342–01), but did not specify a time period for submitting applications. In order to administer the priority provisions of Public Law 109–364, we need to close the application period.

(Authority: 49 CFR 1.66)

Dated: July 23, 2007.

By Order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–14636 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28629]

Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report evaluating the effectiveness of Electronic Stability Control (ESC) Systems. The report's title is: Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report.

DATES: Please submit comments by November 27, 2007.

ADDRESSES:

Report: The report is available for viewing online in PDF format at the Docket Management System (DMS) Web page of the Department of Transportation, *http://dms.dot.gov*. Click on "Simple Search"; type in the five-digit docket number shown at the beginning of this Notice (28629) and click on "Search"; that brings up a list of every item in the docket, starting with a copy of the **Federal Register** notice (item NHTSA–2007–28629–1) and a copy of the report in PDF format (item NHTSA–2007–28629–2).

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2007–28629] by any of the following methods:

- *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may call Docket Management at 1–800–647–5527 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer N. Dang, Evaluation Division, NPO–131, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–455, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–493–0598. FAX: 202–366–3189. E-mail: *Jenny.Dang@dot.gov*.

SUPPLEMENTARY INFORMATION: In 2004, NHTSA initiated an evaluation to assess the effectiveness of ESC in reducing single-vehicle crashes in various domestic and imported passenger cars and Sport Utility Vehicles (SUVs). The preliminary results from that study indicated that ESC was highly effective in reducing single-vehicle crashes. In 2006, NHTSA published a draft of this report (an update and modification to the 2004 report) in support of a proposed rulemaking to establish a new Federal Motor Vehicle Safety Standard, FMVSS No. 126, which requires ESC systems on passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 10,000 pounds or less. Statistical analyses of 1997–2004 crash data from the Fatality Analysis Reporting System (FARS) and 1997–2003 crash data from the State data files estimate reductions with ESC for various types of crash involvements.

- ESC reduced fatal run-off-road crashes by 36 percent for passenger cars and 70 percent for light trucks and vans (LTVs). The reductions are statistically significant.
- Police-reported run-off-road involvements were decreased by 45 percent in passenger cars and 72 percent in LTVs. The decreases are statistically significant.
- Fatal single-vehicle crashes that did not involve pedestrians, bicycles, and animals decreased (due to ESC) by 36 percent in passenger cars and 63 percent in LTVs. The decreases are statistically significant.
- ESC reduced police-reported single-vehicle crashes (excluding pedestrian, bicycle, animal crashes) by 26 percent for passenger cars and 48 percent for LTVs. The reductions are statistically significant.
- Rollover involvements in fatal crashes were decreased by 70 percent in passenger cars and 88 percent in LTVs. The decreases are statistically significant.
- Police-reported crashes involving rollovers were reduced by 64 percent in passenger cars and 85 percent in LTVs. The reductions are statistically significant.
- ESC reduced culpable fatal multi-vehicle crashes by 19 percent for passenger cars and 34 percent for LTVs. Only the reduction involving LTVs is statistically significant.
- Culpable involvements in police-reported multi-vehicle crashes were decreased by 13 percent in passenger cars and 16 percent in LTVs. The decreases are statistically significant.
- Overall, ESC reduced all fatal crashes by 14 percent for passenger cars and 28 percent for LTVs. Only the reduction in LTVs is statistically significant.
- Overall, police-reported crash involvements decreased by 8 percent in passenger cars and 10 percent in LTVs. The decreases are statistically significant.

This evaluation was peer-reviewed by two (2) qualified specialists who have experience in statistics and analysis of crash avoidance. The draft report (Docket No. NHTSA–2006–25801–2) was revised to address most of the comments from the peer-reviewers. You may access their comments on the draft and the entire peer review process in Docket No. NHTSA–2006–26415.

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2007–28629) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, or fax them. The mailing address is U.S. Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on "Help" to obtain instructions. The fax number is 1–202–493–2251.

We also request, but do not require you to send a copy to Jennifer N. Dang, Evaluation Division, NPO–131, National Highway Traffic Safety Administration, Room W53–455, 1200 New Jersey Avenue, SE., Washington, DC 20590 (alternatively, FAX to 202–366–3189 or e-mail to *Jenny.Dang@dot.gov*). She can check if your comments have been received at the Docket and can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–110, Room W41–227, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit them electronically.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the comments by visiting Docket Management in person at Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on "Simple Search."

C. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this Notice (28629). Click on "Search."

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Joseph S. Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. E7–14627 Filed 7–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Committee of the Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, and Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 21, 2007, from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Committee of the Taxpayer Advocacy Panel will be held Tuesday, August 21, 2007, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Ms. Chavez at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: July 19, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–14614 Filed 7–27–07; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Meeting To Prepare Report to Congress; Advisory Committee: U.S.-China Economic and Security Review Commission

ACTION: Notice of open meeting to prepare Report to Congress—August 1–2, 2007, Washington, DC.

SUMMARY: Notice is hereby given of a meeting of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairwoman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate, and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare a report to the Congress "regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China * * * [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions * * *."

Purpose of Meeting: Pursuant to this mandate, the Commission will meet in Washington, DC on August 1 and 2, 2007, to consider drafts of material for its 2007 End-of-Year Report to Congress that have been prepared for its consideration by the Commission staff, and to make modifications to those drafts that Commission members believe are needed.

Topics to be Discussed: The Commissioners will be considering draft Report sections addressing the following topics:

- The United States-China trade and economic relationship, including the relationship's current status, significant changes during 2007, the control of China's economy by its government, and the effect of that control on the United States,
- China's Military Modernization,
- China's Energy and Environmental Policies and Activities, including the strategic impact of these policies and activities on the United States and the world and prospects for addressing the effects of China's energy consumption.

Date and Time: Wednesday, August 1, 2007 (9:30 a.m. to 3 p.m.) and Thursday, August 2, 2007 (9:30 a.m. to 4 p.m.), Eastern Daylight Time.

Place of Meeting: The meetings will occur in Conference Room 333 of the Hall of the States located at 444 North Capitol Street, NW., Washington, DC 20001. Public seating is limited, and will be available on a "first-come, first-served" basis. Advance reservations are not required.

Required Accessibility Statement: The entirety of these Commission editorial and drafting meetings will be open to the public. The Commission may recess the public editorial/drafting meetings to address administrative issues in closed session.

FOR FURTHER INFORMATION ABOUT THIS MEETING, CONTACT: Kathy Michels, Associate Director, U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202–624–1409; e-mail *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Pub. L. 109–108 (November 22, 2005).

Dated: July 25, 2007.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 07–3691 Filed 7–27–07; 8:45 am]

BILLING CODE 1137–00–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for increased disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0065" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Employment Information in Connection with Claim for Disability Benefits, VA Form 21–4192.

OMB Control Number: 2900–0065.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4192 is used to request employment information from a claimant's employer. The collected data is used to determine the claimant's eligibility for increased disability benefits based on unemployability.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 60,000.

Dated: July 17, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14657 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0539" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Supplemental Service Disabled Veterans Insurance, (RH) Life Insurance, VA Forms 29–0188, 29–0189 and 29–0190.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188, 29–0189 and 29–0190 are completed by veterans applying for Supplemental Service Disabled Veterans Insurance. VA uses the information collected to establish veterans' eligibility for insurance coverage.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: July 18, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14658 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to decline Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0212 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the

information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–8636 is completed by veterans to decline Veterans Mortgage Life Insurance (VMLI) or to provide information upon which the insurance premium can be based. VMLI provides financial protection to cover an eligible veteran's outstanding home mortgage in the event of his or her death. The insurance is available only to disabled veterans who, because of their disability, have received a specially adapted housing grant from VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: July 18, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14659 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0654]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify and properly protect VA benefit records.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0654" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Annual Certification of Veteran Status and Veteran-Relatives, VA Form 20–0344.

OMB Control Number: 2900–0654.

Type of Review: Extension of a currently approved collection.

Abstract: VBA employees, non-VBA employees in VBA space and Veteran Service Organization employees who have access to VA's benefit records complete VA Form 20–0344. These individuals are required to provide personal identifying information for themselves and any veteran relatives, in order for VA to identify and protect those benefit records. VA uses the information collected to determine which benefit records require special handling to guard against fraud, conflict of interest, improper influence etc. by VA and non-VA employees.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,834 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 14,000.

Dated: July 18, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14660 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (38CFR 21.7080)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to transfer a servicemember's educational assistance benefits to his or her dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–New (38CFR 21.7080)" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Evidence for Transfer of Entitlement of Education Benefits (CFR 21.7080).

OMB Control Number: 2900–New (38CFR 21.7080).

Type of Review: New collection.

Abstract: Servicemembers on active duty may request to designate up to a maximum of 18 months of their educational assistance entitlement to their spouse, one or more of their children, or a combination of the spouse and children. VA will accept DOD Form 2366–1 as evidence that the servicemember was approved by the military to transfer entitlement. The servicemember must submit in writing to VA, the name of each dependent, the number of months of entitlement transferred to each dependent, and the period (beginning date or ending date) for which the transfer will be effective for each designated dependent. VA will use the information shown on DOD Form 2366–1 to determine whether the dependent qualifies to receive education benefits under the transfer of entitlement provision of law.

Affected Public: Individuals or households.

Estimated Annual Burden: 2.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 24.

Dated: July 18, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14661 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0066]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0066" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form Letter 29–459.

OMB Control Number: 2900–0066.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–459 is used to request employment information from an employer in connection with a claim for disability benefits. VA uses the information to establish the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 862 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

Dated: July 17, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14662 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for refundable credit.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0046" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran, VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–596 is use by administrator, executor, or next of kin to support a claim for money in the form of unearned or unapplied insurance premiums due to a deceased veteran's estate.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: July 16, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14666 Filed 7–27–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to confirm marital status and dependent children.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0043" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to obtain information to confirm marital status and existence of any dependent child(ren). The information is used by VA to determine eligibility and rate of payment for veterans and surviving spouses who are entitled to an additional allowance for dependents.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 226,000.

Dated: July 16, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–14667 Filed 7–27–07; 8:45 am]

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Airbus; comments due by 8-6-07; published 6-6-07 [FR E7-10754]

Boeing; comments due by 8-6-07; published 6-20-07 [FR E7-11926]

British Aerospace Regional Aircraft; comments due by 8-6-07; published 7-6-07 [FR E7-13091]

Pacific Aerospace Corp., Ltd.; comments due by 8-8-07; published 7-9-07 [FR E7-13247]

Pacific Aerospace Ltd.; comments due by 8-6-07; published 7-6-07 [FR E7-13092]

Viking Air Ltd.; comments due by 8-6-07; published 7-6-07 [FR E7-13125]

Airworthiness standards:

Propellers; comments due by 8-6-07; published 6-20-07 [FR 07-03050]

Class E airspace; comments due by 8-9-07; published 7-10-07 [FR 07-03341]

Restricted areas; comments due by 8-6-07; published 6-6-07 [FR 07-02734]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Indian Reservation Road Bridge Program; comments due by 8-6-07; published 6-5-07 [FR E7-09869]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Active trade or business requirement section 355 guidance; comments due by 8-6-07; published 5-8-07 [FR 07-02269]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 556/P.L. 110–49

Foreign Investment and National Security Act of 2007 (July 26, 2007; 121 Stat. 246)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–062–00004–9)	10.00	[5] Jan. 1, 2007
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–062–00006–5)	50.00	Jan. 1, 2007
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
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27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
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400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
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1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
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1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
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10 Parts:			
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11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
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220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
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60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
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1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
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400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
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141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
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20 Parts:			
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21 Parts:			
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200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
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22 Parts:			
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300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
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200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
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1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
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1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
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31 Parts:			
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300–399	(869–060–00129–8)	40.00	July 1, 2006
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200–299	(869–060–00132–8)	37.00	July 1, 2006
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63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
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63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
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266–299	(869–060–00163–8)	50.00	July 1, 2006
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2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
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Title	Stock Number	Price	Revision Date
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600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
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CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
Individual copies		4.00	2007
Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

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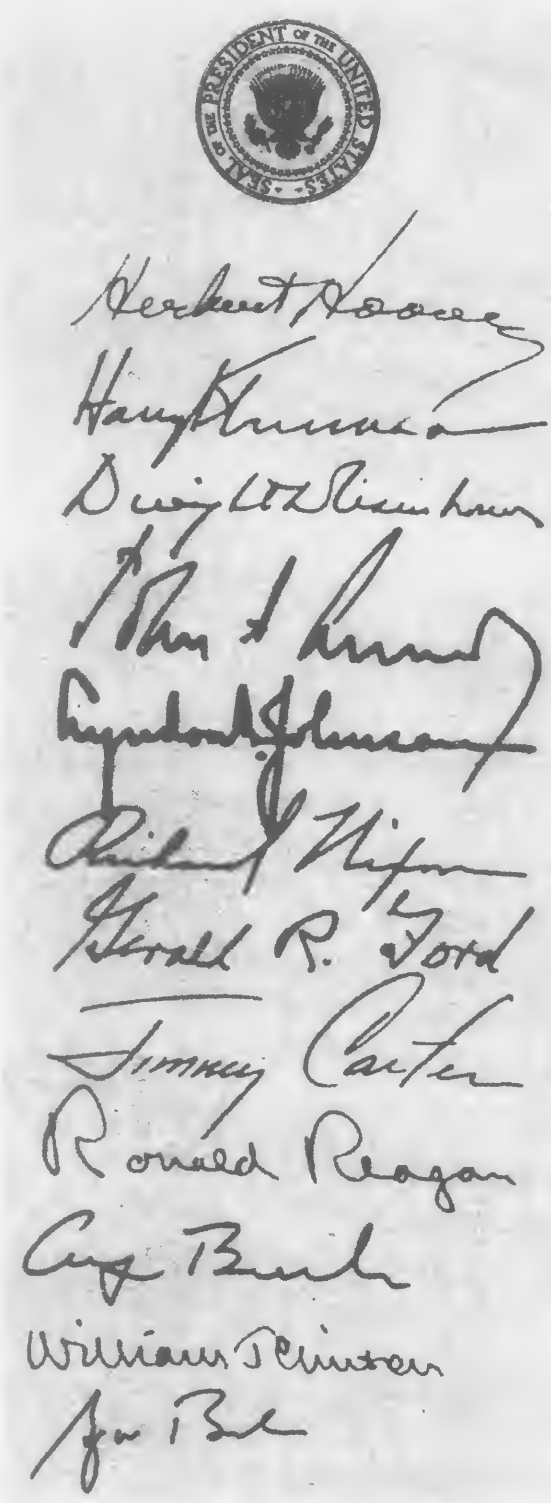

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