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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0170]

Witchweed Quarantine Regulations; Regulated Areas in North Carolina and South Carolina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the witchweed regulations by adding or removing areas in North Carolina and South Carolina from the list of regulated areas. Based on information provided by the State of South Carolina, this final rule removes one farm from the list of suppressive areas that appeared in the interim rule. This action is necessary to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

DATES: *Effective Date:* August 10, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5708.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga* spp.) is a parasitic plant that attacks some of the most important crops in the United States (corn, sorghum, sugar cane, and rice), feeding off the roots of its host and causing degeneration. Within the United States, witchweed is only found in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations), quarantine affected areas within the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

In an interim rule [1] effective February 15, 2007, and published in the **Federal Register** on February 22, 2007 (72 FR 7923–7926, Docket No. APHIS–2006–0170), we amended the list of regulated areas in § 301.80–2a by removing areas in Cumberland, Pender, Robeson, and Sampson Counties, NC, and Horry and Marion Counties, SC, from the list of suppressive areas. In addition to removing these areas from the list of regulated areas in § 301.80–2a, we also added several areas to the list and revised the descriptions of several areas on the list.

We solicited comments on the interim rule for 60 days ending on April 23, 2007. We did not receive any comments. However, subsequent to the publication of the interim rule, agricultural officials with the State of South Carolina informed us that one farm in Marion County, SC, where witchweed had been eradicated was erroneously listed in the interim rule as a suppressive area. Therefore, in this final rule, we are removing that farm from the list of regulated areas.

Therefore, for the reasons given in the interim rule and this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

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

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule became effective on February 15, 2007. This rule amends the description of the regulated areas to remove a farm where witchweed has been eradicated. Immediate action is warranted to relieve restrictions on the interstate movement of regulated articles from that farm.

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0170.*

List of Subjects in 7 CFR Part 301

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

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 72 FR 7923–7926 on February 22, 2007, is adopted as a final rule with the following change:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.80–2a [Amended]

■ 2. In § 301.80–2a, under the heading ''South Carolina'', the list of suppressive areas is amended by removing, under Marion County, the entry ''The Porter, Hubert, farm located on the south side of an unpaved road known as Bubba Road, 1.3 miles south from its intersection with State Highway 76.''

Done in Washington, DC, this 6th day of August 2007.

Cindy Smith,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–15711 Filed 8–9–07; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

RIN 3150–AI15

NRC Size Standards; Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the size standards it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act and making

the same change to its annual fee rule. NRC is increasing the receipts-based small business size standard from $5 million to $6.5 million to conform to the standard set by the Small Business Administration (SBA). This size standard reflects the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard on January 23, 2002 (67 FR 3041) and on December 6, 2005 (70 FR 72577) to account for inflation.

DATES: The direct final rule will become effective on October 24, 2007, unless significant adverse comments on the amendment are received by September 10, 2007. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after September 10, 2007 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number [RIN 3150–AI15] in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information, such as name, address, phone, e-mail address, etc. will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

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FOR FURTHER INFORMATION CONTACT: Michael Lesar, Chief, Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7163, e-mail *mtl@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC established its size standards on December 9, 1985 (50 FR 50241). On November 6, 1991 (56 FR 56671), NRC conformed its format for size standards to mirror the definitions of small entities in the Regulatory Flexibility Act. NRC last adjusted its receipts-based size standard levels in a final rule published in the **Federal Register** on April 11, 1995 (60 FR 18344).

The NRC is increasing its receipts-based small business size standard from $5.0 million to $6.5 million. This adjustment is to conform to the SBA receipts-based business size standard, the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard for inflation on January 23, 2002 (67 FR 3041) and again on December 6, 2005 (70 FR 72577). The NRC is not revising any of its other size standards at this time. The NRC has coordinated these size standards with the Assistant Director for Size Standards, SBA. This rule change will result in reduced annual fees being imposed on licensees under the FY 2007 fee rule for those licensees with receipts between $5.0 million and $6.5 million.

Procedural Background

This rulemaking has the simple aim of updating NRC's size standards to reflect those of the SBA. Because the NRC believes that this action should not cause controversy, the NRC is using the direct final rule process for this rule. The amendment in this rule will become effective on October 24, 2007, shortly after the August 6, 2007 effective date of NRC's final license, inspection, and annual fee rule for FY 2007 (72 FR 31401; 6/6/2007). However, if the NRC receives significant adverse comments on this direct final rule by September 10, 2007, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is modifying its size standards. This action does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Plain Language

The Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the regulation.

Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and are expected to result in an increase in the number of NRC licensees that qualify as small entities for annual fee assessments and other purposes.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule is administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and are expected to result in an increase in the number of NRC licensees that qualify as small entities.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this direct final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.810, paragraph (a)(1) is revised to read as follows:

§ 2.810 NRC size standards.

(a) * * *

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $6.5 million or less over its last 3 completed fiscal years; or

* * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 3. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

§ 171.16 [Amended]

■ 4. In § 171.16, paragraph (c) introductory text is revised to read as follows:

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-for-Profit Organizations (Gross Annual Receipts):	
$350,000 to $6.5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

* * * * *

Dated at Rockville, Maryland, this 27th day of July, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–15555 Filed 8–9–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28771; Airspace Docket No. 07–ACE–8]

Modification of Class E Airspace; Fort Scott, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying Class E airspace at Fort Scott Municipal Airport, KS. Standard Instrument Approach Procedures have been developed for Fort Scott Municipal Airport, KS. Additional controlled airspace extending upward from the surface and upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Fort Scott Municipal Airport, KS.

DATES: This direct final rule is effective on 0901 UTC, December 20, 2007. The director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 1, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You must identify the docket number FAA–2007–28771/Airspace Docket No. 07–ACE–8 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO, 64106; at telephone number (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area at Fort Scott Municipal Airport, KS. The radius of the Class E airspace area extending upward from 700 feet or more above the surface of the earth is expanded from within a 6.4-mile radius to within a 7-mile radius of the airport. This modification brings the legal description of the Fort Scott Municipal Airport, KS Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. of the same order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be

published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenter's wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No FAA–2006–28771/Airspace Docket No. 07–ACE–8.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is non-controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Fort Scott Municipal Airport, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Fort Scott, KS [Amended]

Fort Scott Municipal Airport, KS
(Lat. 37°47′54″ N., long. 94°46′10″ W.)
Fort Scott NDB
(Lat. 37°47′40″ N., long. 94°45′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Fort Scott Municipal Airport and within 2.6 miles each side of the 350° bearing from Fort Scott NDB extending from the 7.0-mile radius of the airport to 7 miles north of the NDB.

* * * * *

Issued in Fort Worth, TX, on July 31, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–3882 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26364; Airspace Docket No. 06–ANM–12]

Establishment of Class E Airspace; Beaver, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Beaver, UT. Additional Class E airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (SIAP) at Beaver Municipal Airport. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS IAP at Beaver Municipal Airport, Beaver, UT.

DATES: 0901 UTC, October 25, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 740.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6714.

SUPPLEMENTARY INFORMATION:

History

On February 23, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Beaver, UT, (72 FR 8136). This action would improve the safety of IFR aircraft executing this new RNAV GPS approach procedure at Beaver Municipal Airport, Beaver, UT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Beaver, UT. Additional controlled airspace is necessary to accommodate IFR aircraft executing the new RNAV (GPS) approach procedure at Beaver Municipal Airport, Beaver, UT.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation; (1) is

not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended].

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Beaver, UT [New]

Beaver Municipal Airport, UT
(Lat. 38°13′51″ N., long. 112°40′31″ W.)
Bryce Canyon VORTAC
(Lat. 37°41′21″ N., long. 112°18′14″ W.)

That airspace extending upward from 700 feet above the surface within a 5.0-mile radius of Beaver Municipal Airport and within 3 miles each side of the 261° bearing from the Airport extending from the 5.0-mile radius to 14.0 miles west of the Airport, and that airspace extending upward from 1,200 feet above the surface beginning at lat. 38°19′24″ N., long. 113°30′00″ W.; thence east on V–244 to lat. 38°22′22″ N., long. 112°37′47″ W.; thence south on V–257 to BRYCE CANYON VORTAC; thence west on V–293 to lat. 37°56′30″ N., long. 113°00′00″ W.; to point of beginning.

* * * * *

Issued in Seattle, Washington, on April 26, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–15579 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 24

[Docket Number: OSHA–2007–0028]

RIN 1218–AC25

Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Federal Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Labor amends the regulations governing the employee protection (''whistleblower'') provisions of Section 211 of the Energy Reorganization Act of 1974, as amended (''ERA''), to implement the statutory changes enacted into law on August 8, 2005, as part of the Energy Policy Act of 2005. The regulations also make the procedures for handling retaliation complaints under Section 211 of the ERA and the environmental whistleblower statutes listed in Part 24 as consistent as possible with the more recently promulgated procedures for handling retaliation complaints under other employee protection provisions administered by the Occupational Safety and Health Administration (''OSHA''), see 29 CFR parts 1979–1981.

DATES: This interim final rule is effective on August 10, 2007. Comments and additional materials must be submitted (postmarked, sent or received) by October 9, 2007.

ADDRESSES: You may submit comments and additional materials by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0028, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2007–0028). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birth dates. For further information on submitting comments plus additional information on the rulemaking process, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Nilgun Tolek, Director, Office of Investigative Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 2005, Public Law 109–58, was enacted on August 8, 2005. Among other provisions, this new law amended the employee protection provisions for nuclear whistleblowers under Section 211 of the ERA, 42 U.S.C. 5851; the statutory amendments affect

only ERA whistleblower complaints. The amendments to the ERA apply to whistleblower claims filed on or after August 8, 2005, the date of the enactment of Section 629 of the Energy Policy Act of 2005. The changes to the regulations also affect the six environmental whistleblower statutes because the same procedures apply to each of the statutes covered in Part 24. The regulatory changes recognize the importance of consistency in the procedures governing the whistleblower statutes administered by OSHA.

II. Public Participation

Submission of Comments and Access to Docket

You may submit comments and additional materials (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All submissions must identify the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2007–0028). You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic submissions by name, date, and docket number so OSHA can attach them to your submissions.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments, requests for hearings and attachments, and to access the docket is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

III. Summary of Statutory Changes to ERA Whistleblower Provisions

Section 629 of Public Law 109–58 (119 Stat. 785) amended Section 211 of the ERA, 42 U.S.C. 5851 by making the changes described below.

Revised Definition of ''Employer''

Section 211 of the ERA defined a covered ''employer'' to include: licensees of the Nuclear Regulatory Commission (''Commission''); applicants for such licenses, and their contractors and subcontractors; contractors and subcontractors of the Department of Energy, except those involved in naval nuclear propulsion work under Executive Order 12344; licensees of an agreement State under Section 274 of the Atomic Energy Act of 1954; applicants for such licenses, and their contractors and subcontractors. The August 2005 amendments revised the definition of ''employer'' to extend coverage to employees of contractors and subcontractors of the Commission; the Commission; and the Department of Energy.

De Novo Review

The August 2005 amendments added a provision for de novo review by a United States District Court in the event that the Secretary has not issued a final decision within one year after the filing of a complaint, and there is no showing that the delay is due to the bad faith of the complainant.

IV. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part have been revised in the interest of consistency to conform to the regulations implementing the employee protection provisions of the following statutes that are administered and enforced by the Secretary of Labor: Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), codified at 29 CFR part 1979; the Sarbanes-Oxley Act of 2002 (''SOX''), codified at 29 CFR part 1980; and the Pipeline Safety Improvement Act of 2002 (''PSIA''), codified at 29 CFR 1981. The section numbers of this regulation also have been changed to correspond with the numbering under the regulations implementing AIR21, SOX, and PSIA. Although these regulations are intended to conform to those implementing AIR21, SOX, and PSIA, they make one change in terminology; they refer to actions brought under the employee protection provisions of these statutes as actions alleging ''retaliation'' rather than ''discrimination.'' This change in terminology, which is not intended to have substantive effect, reflects that claims brought under these employee protection provisions are prototypical retaliation claims. A retaliation claim is a specific type of discrimination claim that focuses on actions taken as a result of an employee's protected activity rather than as a result of an employee's characteristics (i.e., race, gender, or religion). The burdens of proving a retaliation claim are the same as those of a standard discrimination claim. *See Essex* v. *United Parcel Service, Inc.*, 111 F.3d 1304, 1308 (7th Cir. 1997).

Section 24.100 Purpose and Scope

This section (formerly § 24.1) describes the purpose of the regulations implementing the employee protection provisions of seven statutes enforced by the Secretary of Labor and provides an overview of the procedures covered by the regulations. The section has been revised to refer to the Federal Water Pollution Control Act, instead of the Clean Water Act. They are synonymous, but the Office of Administrative Law Judges and the Administrative Review Board generally use Federal Water Pollution Control Act, and we do so here for the sake of consistency. In addition, the section has been renumbered to conform to the numbering system for regulations that implement AIR21, SOX, and the PSIA. Thus, for example, former § 24.1 becomes current § 24.100.

Section 24.101 Definitions

This new section includes general definitions applicable to the employee protection provisions of the seven statutes listed in § 24.100(a). This section does not include program-specific definitions, which may be found in the statutes.

Section 24.102 Obligations and Prohibited Acts

This section (formerly § 24.2) describes the whistleblower activity that is protected under the statutes covered by this Part and the type of conduct that is prohibited in response to any protected activity. The language generally has been revised to conform to

the language in the regulations that implement the AIR21, SOX, and PSIA whistleblower provisions. The changes are not intended to be substantive. References to the statutes listed in 24.100(a) have deleted the adjective ''Federal'' as unnecessary. Paragraph (e) has been moved from former Sec. 24.9. We note that the ARB interprets the phrase ''deliberate violations'' for the purpose of denying protection to an employee as including an element of willfulness. *See Fields* v. *United States Department of Labor Administrative Review Board,* 173 F.3d 811, 814 (11th Cir. 1999) (petitioners knowingly conducted unauthorized and potentially dangerous experiments).

Section 24.103 Filing of Retaliation Complaint

This section (formerly § 24.3) has been revised to be consistent with the regulatory procedures implementing the whistleblower provisions of the AIR21, SOX, and PSIA. Thus, the section heading has been changed from ''Complaint'' to ''Filing of Retaliation Complaint.'' Also, paragraph (c) has been changed to paragraph (b) and the heading has been changed from ''Form of Complaint'' to ''Nature of filing;'' paragraph (d) has been changed to paragraph (c); and paragraph (b) has been changed to paragraph (d) and the language has been changed to conform with that appearing in the AIR21, SOX, and PSIA regulations. Finally, paragraph (e) ''Relationship to section 11(c) complaints'' has been added to explain the policy of the Secretary regarding the relationship between complaints filed under the statutes listed in Sec. 24.100(a) and a complaint under Section 11(c) of the Occupational Safety and Health Act.

Section 24.104 Investigation

This section (formerly § 24.4) has been revised so that its language will conform more closely to the language of the regulations implementing AIR21, SOX, and PSIA. Additionally, former paragraph (b) of § 24.5 has been revised and moved to this section, and former paragraph (d) of § 24.4 has been revised and moved to § 24.105, where it more appropriately appears under ''Issuance of findings and orders.''

This rule sets forth two different standards of causation—''motivating'' factor and ''contributing'' factor—depending on the whistleblower statute under which a complaint is filed. When investigating or adjudicating whistleblower complaints under the six environmental whistleblower statutes, the Department of Labor relies on the traditional standards derived from Title VII and other discrimination law as set forth under *Mt. Healthy City School District Board of Education* v. *Doyle,* 429 U.S. 274 (1977); *Texas Dep't of Community Affairs* v. *Burdine,* 450 U.S. 248 (1981); and *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973). *See Dartey* v. *Zack Co. of Chicago,* No. 82–ERA–2, 1983 WL 189787, at *3–*4 (Sec'y of Labor Apr. 25, 1983 (discussing *Burdine,* 450 U.S. at 254–255)). Under these standards, a complainant seeking to prove retaliation must first establish a prima facie case that protected activity was a motivating factor in the adverse action, which creates a presumption of retaliation. *See, e.g., St. Mary's Honor Ctr.* v. *Hicks,* 509 U.S. 502 (1993). Once a complainant establishes a prima facie case, the employer has the burden of producing a legitimate, nonretaliatory explanation for its actions. If the employer presents such evidence, the presumption in favor of the complainant disappears, and the complainant must establish by a preponderance of the evidence that the employer's explanation was a pretext, that is, that the real reason for the adverse action was retaliation. A prima facie case, together with proof that the employer's explanation is pretext, permits (but does not require) a trier of fact to find retaliation. *See Reeves* v. *Sanderson Plumbing Products, Inc.,* 530 U.S. 133, 147–148 (2000); *St. Mary's Honor Center,* 509 U.S. at 519 (''It is not enough * * * to disbelieve the employer; the factfinder must believe the plaintiff's explanation of intentional discrimination.''); *Dartey* v. *Zack, supra.* Thus, under these principles, an employee must prove by a preponderance of the evidence that retaliation was a ''motivating factor'' for the adverse employment action. The Secretary can conclude from the evidence that the employer's reason for the retaliation was a pretext and rule for the employee, or that the employer was not motivated in whole or in part by protected activity and rule for the employer, or that an employer acted out of mixed motives. See *Dartey* v. *Zack,* 1983 WL 189787, at *4. If the Secretary concludes that the employer acted out of mixed motives, the employer can escape liability by proving, by a preponderance of the evidence, that it would have reached the same decision even in the absence of protected activity. Id. (discussing *Mt. Healthy,* 429 U.S. at 287).

Paragraph (b) of this section, which sets forth procedures that apply only in ERA cases, applies the ERA's statutory burdens of proof. Since the 1992 amendments to the ERA, its whistleblower provisions, in contrast to the other whistleblower provisions listed under Sec. 24.100(a), have contained specific statutory standards for the dismissal and adjudication of complaints and for the resolution of mixed motive or dual motive cases. See 42 U.S.C. 5851(b)(3)(A) through (b)(3)(D); Public Law 102–486, section 2902, 106 Stat. at 3123–3124. The ERA requires that a complainant make an initial prima facie showing that protected activity was ''a contributing factor'' in the unfavorable personnel action alleged in the complaint, i.e., that whistleblowing activity, alone or in combination with other factors, affected in some way the outcome of the employer's personnel decision. 42 U.S.C. 5851(b)(3)(A). If the complainant does not make the prima facie showing, the investigation must be discontinued and the complaint dismissed. See *Trimmer* v. *United States Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the distinct burden-shifting framework of the 1992 ERA amendments served a ''gatekeeping function'' that ''stemmed frivolous complaints''). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer ''demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action'' in the absence of the protected activity. 42 U.S.C. 5851(b)(3)(B). Thus, under the ERA, the Secretary must dismiss the complaint and not investigate (or cease investigating) if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the unfavorable personnel action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same unfavorable personnel action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the ERA provides statutory burdens of proof that require an employee to prove that the alleged protected activity was a ''contributing factor'' to the alleged adverse action. 42 U.S.C. 5851(b)(3)(C). If the employee proves that the alleged protected activity was a contributing factor to the adverse action, the employer, to escape liability, must prove by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. A contributing factor is ''any factor, which alone or in combination with other factors, tends to

affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)); *cf. Trimmer,* 174 F.3d at 1101 (the 1992 amendments aimed, in part, ''to make it easier for [ERA] whistleblowers to prevail in their discrimination suits''). In proving that protected activity was a contributing factor in the adverse action, ''a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,'' because a complainant alternatively can prevail by showing that the respondent's reason, while true, is only one of the reasons for its conduct, and that another reason was complainant's protected activity. See *Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* No. 04–149, 2006 WL 1516650, *13 (ARB May 31, 2006) (discussing contributing factor test under SOX) (citing *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004).

The ERA statutory burdens of proof do not address the evidentiary standard that applies to a complainant's proof that protected activity was a contributing factor in an adverse action. The Secretary therefore adheres to traditional Title VII discrimination law for that determination, i.e., the complainant must prove by a ''preponderance of the evidence'' that his protected activity contributed to his termination; otherwise, the burden never shifts to the employer to establish its ''clear and convincing evidence'' mixed-motive defense. See, e.g., *Dysert* v. *United States Secretary of Labor,* 105 F.3d 607, 609 (11th Cir. 1997) (upholding Department's interpretation of 42 U.S.C. 5851(b)(3)(C), as requiring an employee to prove by a preponderance of the evidence that protected activity was a contributing factor in an adverse action); *see also Trimmer,* 174 F.3d at 1102 (''[o]nly if the complainant meets his burden [of proving by a preponderance of the evidence that he engaged in protected activity that was a contributing factor in an unfavorable employment decision] does the burden then shift to the employer to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.''); *Stone & Webster Engineering Corp.* v. *Herman,* 115 F.3d 1568, 1572 (11th Cir. 1997) (under section 5851, an employee must first persuade the Secretary that protected activity was a contributing factor in an adverse action and then, if the employee succeeds, the employer must prove by clear and convincing evidence that it would have taken the same action in the absence of protected activity).

Under traditional Title VII burden shifting principles applicable to the six environmental whistleblower statutes, if the Secretary concludes that the employer acted for both prohibited and legitimate reasons (i.e., a ''mixed motive'' case), the employer can escape liability by proving, by a preponderance of the evidence, that it would have reached the same decision even in the absence of the protected conduct. See *Dartey* v. *Zack,* 1983 WL 189787, at *4 (discussing Mt. Healthy, 429 U.S. at 287). However, the 1992 ERA amendments altered the employer's burden in a ''mixed motive'' case; under the ERA, once the Secretary concludes that the employer acted for both prohibited and legitimate reasons, the employer can escape liability only by proving by clear and convincing evidence that it would have reached the same decision even in the absence of the protected activity. 42 U.S.C. 5851(b)(3)(D). The ''clear and convincing evidence'' standard is a higher burden of proof for employers than the former ''preponderance of the evidence'' standard. See 138 Cong. Rec. 32,081, 32,082 (1992).

Section 24.105 Issuance of Findings and Orders

The procedures set forth in this section formerly appeared under a paragraph of § 24.4, the Investigations section. This new section was created for purposes of clarification and consistency with the regulations implementing the AIR21, SOX, and PSIA whistleblower provisions. The former regulations provided that the Assistant Secretary would issue a ''Notice of Determination'' at the conclusion of the investigation, or upon dismissal of a complaint. These regulations no longer use the term ''Notice of Determination.'' Instead, the regulations refer to the issuance of findings and orders, the nomenclature used in the regulations implementing AIR21, SOX, and PSIA. This change in nomenclature is not intended to be substantive.

The 30-day timeframe for completion of the investigation has been retained because it is a statutory requirement under the majority of the whistleblower statutes covered by this part (the Solid Waste Disposal Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation and Liability Act have no timeframe). The current regulations provide a 5-business-day timeframe for filing objections to the findings. These new regulations have been changed to provide that if no objections to the Assistant Secretary's findings and order are filed within 30 days of their receipt, the findings and order of the Assistant Secretary will become the final order of the Secretary. Thus, the timeframe for objecting to the findings and/or order and for requesting a hearing has been extended from 5 business days to 30 days. The Secretary is aware that, since the ERA, the Clean Air Act (''CAA''), the Safe Drinking Water Act (''SDWA''), and the Toxic Substances Control Act (''TSCA'') provide that the Secretary should issue a final decision within 90 days of the filing of the complaint, allowing the parties 30 days in which to object to the Assistant Secretary's findings and any order issued may have an impact on the Department's meeting the 90-day timeframe. Although the ERA amendments in 2005 did not change the 90-day timeframe, the Secretary believes that in amending the ERA in 2005, Congress recognized that it appropriately could take up to one year to complete the investigatory and adjudicative processing of a whistleblower complaint (i.e., issue a final decision of the Secretary) under these environmental statutes. Accordingly, the Secretary believes that allowing 30 days for a party to object to the Assistant Secretary's findings and request a hearing is warranted. Not only does the extension make the regulations more consistent with those implementing AIR21, SOX, and PSIA, it also offers the parties a more reasonable timeframe in which to consider whether to appeal the Assistant Secretary's findings.

Subpart B—Litigation

Section 24.106 Objections to the Findings and Order and Request for a Hearing

Formerly, the procedures for requesting a hearing before an administrative law judge (''ALJ'') were set forth under § 24.6. As indicated above, to be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Washington, DC 20001 within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections to the other parties of record, as well as the OSHA official who

issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, N 2716, 200 Constitution Ave., NW., Washington, DC 20210, the failure to serve copies of the objections to the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* No. 04–101, 2005 WL 2865915, *7 (ARB Oct. 31, 2005).

Section 24.107 Hearings

This section has been revised to conform to the regulations implementing the whistleblower provisions under AIR21, SOX, and PSIA. It adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR Part 18, Subpart A. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and respondent object to the findings and/or order of the Assistant Secretary. Otherwise, this section no longer addresses procedural issues, e.g., place of hearing, right to counsel, procedures, evidence and record of hearing, oral arguments and briefs, and dismissal for cause, because the Office of Administrative Law Judges has adopted its own rules of practice that cover these matters. In order for hearings to be conducted as expeditiously as possible, and particularly in light of the unique provision in the ERA allowing complainants to seek a de novo hearing in federal court if the Secretary has not issued a final decision within one year of the filing of the complaint, this section provides that the ALJ has broad authority to limit discovery. For example, an ALJ may limit the number of interrogatories, requests for production of documents, or depositions allowed. An ALJ also may exercise discretion to limit discovery unless the complainant agrees to delay filing a complaint in federal court for some definite period of time beyond the one-year point. If a complainant seeks excessive or burdensome discovery under the ALJ's rules and procedures at part 18 of Title 29, or fails to adhere to an agreement to delay filing a complaint in federal court, a district court considering a request for de novo review might conclude that such conduct resulted in a delay due to the claimant's bad faith.

Former paragraphs (f) and (g) of this section have been moved to section 24.108.

Section 24.108 Role of Federal Agencies

This new section was added to conform these regulations to those implementing AIR21, SOX, and PSIA. As noted above, the substance of this section formerly was set forth under paragraphs (f) and (g) of § 24.6, the section covering hearings. No substantive changes are intended. Under the ERA and the environmental whistleblower statutes, OSHA does not ordinarily appear as a party in the proceeding. The Secretary has found that in most whistleblower cases, parties have been ably represented and the public interest has not required the Department's participation. Nevertheless, the Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the Administrative Review Board proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Environmental Protection Agency, the Nuclear Regulatory Commission, and the Department of Energy, at those agencies' discretion, also may participate as amicus curiae at any time in the proceedings.

Section 24.109 Decision and Order of the Administrative Law Judge

This section sets forth the content of the decision and order of the ALJ, and includes the standard for finding a violation under the environmental statutes and the ERA. The section further provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or without a complete investigation pursuant to § 24.104 is not subject to review. Thus, paragraph (c) of section 24.109 clarifies that the Assistant Secretary's determinations on whether to proceed with an investigation under the ERA and whether to make particular investigative findings under any of the statutes subject to this Part are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not remand cases to the Assistant Secretary to conduct an investigation or make further factual findings. A full discussion of the burdens of proof used by the Department of Labor to resolve whistleblower cases under this part is set forth above in the discussion of § 24.104.

This section also has been revised to eliminate the requirement under the ERA for the ALJ to issue a preliminary order of reinstatement separate from the findings. The section clarifies that when an ALJ's decision finds that the complaint has merit and orders relief, the order will be effective immediately upon its receipt by the respondent, except for that part of the order awarding compensatory damages. Congress intended that whistleblowers under the ERA be reinstated and provided additional interim relief based upon the ALJ's order even while the decision is on review with the Administrative Review Board. The previous regulations have caused confusing delays to the complainant's right to immediate reinstatement. *See, e.g., McNeill* v. *Crane Nuclear, Inc.,* No. 02–002, 2002 WL 31932543, *1–*2 (Adm. Rev. Bd. Apr. 24, 2006). The Secretary intends that, by eliminating any requirement that the ALJ ''shall also issue a preliminary order providing all of the relief'' specified in the recommended order before an interim order becomes effective, confusion will be avoided and congressional intent to have complainants promptly reinstated based upon a meritorious ALJ decision will be better effectuated. Furthermore, the ALJ's order will be effective immediately whether or not the ALJ designates the decision and/or order as recommended. As the Administrative Review Board recently recognized, every decision of an ALJ is recommended until it becomes the final decision of the Secretary. *Welch* v. *Cardinal Bankshares Corp.,* No. 06–062, 2006 WL 861374, * 3 n. 13 (Adm. Rev. Bd. Mar. 31, 2006) (''The APA authorizes ALJs to issue recommended decisions. See 5 U.S.C. 554(d) ('The employee [i.e. ALJ] who presides at the reception of evidence pursuant to section 556 of this title shall make the *recommended decision* or initial decision required by section 557 of this title.* * *' (emphasis added); 5 U.S.C. 557(c) ('Before a *recommended,* initial,

or tentative decision, or a decision on agency review of the decision of subordinate employees * * *. All decisions, including initial, *recommended,* and tentative decisions, are a part of the record. * * *'') (emphasis added).'').

The substance of the rest of this section was formerly found in section 24.7. The requirement that the ALJ issue a decision within 20 days after the conclusion of the hearing has been eliminated because procedures for issuing decisions, including their timeliness, is addressed by the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges at 29 CFR 18.57.

Section 24.110 Decision and Orders of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary if no timely petition for review is filed with the Administrative Review Board. Upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the Board for review of that decision, or it becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The appeal provisions in this part have been revised, consistent with the whistleblower provisions of AIR21, SOX and PSIA, to provide that an appeal to the Board is no longer a matter of right but is accepted at the discretion of the Board. Congress intended these whistleblower actions to be expedited and this change may assist in furthering that goal. To facilitate review, the parties must specifically identify the findings and conclusions to which they take exception, or the exceptions ordinarily will be deemed waived by the parties. The Board has 30 days to decide whether to grant the petition for review. If the Board does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. The ERA, CAA, SDWA, and TSCA contain a 90-day timeframe for issuing final agency decisions. Notwithstanding this short timeframe, the Secretary believes that it is appropriate to give the Board 30 days in which to decide whether to grant review; as stated above, the Secretary believes that in amending the ERA in August 2005, Congress recognized that the Department appropriately could take up to one year to complete the investigatory and adjudicative processing of a whistleblower complaint under these statutes. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for that ordered under the ERA, is inoperative while the matter is pending before the Board. The relief ordered by the ALJ under the ERA is effective immediately except for that portion awarding compensatory damages. This section further provides that, when the Board accepts a petition for review, its factual determinations will be reviewed under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provisions of AIR21, SOX, and PSIA.

This section also provides that in the exceptional case, the Board may grant a motion to stay an ALJ's order of relief under the ERA, which otherwise will be effective, while review is conducted by the Board. The Secretary believes that a stay of an ALJ's order of relief under the ERA only would be appropriate where the respondent can establish the necessary criteria for equitable injunctive relief, i.e., irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public favors a stay.

Subpart C—Miscellaneous Provisions

Section 24.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigative and adjudicative stages of the case. The regulations reflect that settlement agreements under the statutory provisions of the ERA, CAA, SDWA, and TSCA must be reviewed and approved by the Secretary to ensure that they are just and reasonable and in the public interest. *See Beliveau* v. *United States Dep't of Labor,* 170 F.3d 83, 86 (1st Cir. 1999); *Macktal* v. *Secretary of Labor,* 923 F.2d 1150, 1154 (5th Cir. 1991). Although it has been OSHA's practice to review settlements for approval under all the environmental whistleblower statutes, it is required by statute only under the ones noted above. *See Bertacchi* v. *City of Columbus-Division of Sewerage & Drainage,* ARB Case No. 05–155 (April 13, 2006). Notwithstanding this statutory distinction, the Department encourages the parties to submit all settlements for review and approval, even those arising under the CERCLA, SWDA, and FWPCA. We note that a settlement that has not been reviewed and approved by the Secretary will not be considered a final order enforceable under section 24.113.

Section 24.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court. Paragraph (d) reflects that original jurisdiction for judicial review of a decision issued under the Comprehensive Environmental Response, Compensation and Liability Act is with the district courts rather than the appellate courts. See 42 U.S.C. 9610(b) and 9613(b). The paragraph also reflects, however, that when an agency decision is based on other statutes that provide for direct review in the court of appeals, principles of judicial economy and consistency justify review of the entire proceeding in the court of appeals. *See Ruud* v. *United States Dep't of Labor,* 347 F.3d 1086, 1090 (9th Cir. 2003) (''[T]he court of appeals should entertain a petition to review an agency decision made pursuant to the agency's authority under two or more statutes, at least one of which provides for direct review in the court of appeals, where the petition involves a common factual background and raises a common legal question. Consolidated review of such a petition avoids inconsistency and conflicts between the district and appellate courts while ensuring the timely and efficient resolution of administrative cases.''); *see also Shell Oil Co.* v. *F.E.R.C.,* 47 F.3d 1186, 1195 (D.C. Cir. 1995) (''[W]hen an agency decision has two distinct bases, one of which provides for exclusive jurisdiction in the court of appeals, the entire decision is reviewable exclusively in the appellate court.'') (citations and internal question marks omitted).

Section 24.113 Judicial Enforcement

This section describes the Secretary's power under several of the statutes listed in Sec. 24.100(a) to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued under the ERA and the CAA.

Section 24.114 District Court Jurisdiction of Retaliation Complaints Under the Energy Reorganization Act

This section sets forth the ERA provision allowing complainants to bring an action in district court for de novo review if there has been no final decision of the Secretary within one year of the filing of the complaint and there is no delay due to the complainant's bad faith. It provides that complainants will give notice 15 days in advance of their intent to file a complaint in district court. This provision authorizing a federal court complaint is similar to one under the whistleblower provisions of SOX, but is otherwise unique among the whistleblower statutes administered by the Secretary. This statutory scheme creates the possibility that a complainant will have litigated a claim before the agency, will receive a decision from an ALJ, and will then file a complaint in district court while the case is pending review by the Board. The Act might even be interpreted to allow a complainant to bring an action in federal court after receiving a final decision from the Board, if that decision were issued more than one year after the filing of the complaint. The Secretary believes that it would be a waste of the resources of the parties, the Department, and the courts for complainants to pursue duplicative litigation. The Secretary notes that the courts have recognized that, when a party has had a full and fair opportunity to litigate a claim, an adversary should be protected from the expense and vexation of multiple lawsuits and that the public interest is served by preserving judicial resources by prohibiting the same parties making the same claims. *See Montana* v. *United States,* 440 U.S. 147, 153 (1979). When an administrative agency acts in a judicial capacity and resolves disputed issues of fact properly before it, which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply the principles of issue preclusion (collateral estoppel) or claim preclusion (res judicata) on the basis of that administrative decision. *See University of Tennessee* v. *Elliott,* 478 U.S. 788, 799 (1986) (citing *United States* v. *Utah Construction and Mining Co.,* 384 U.S. 394, 422 (1966)). Therefore, the Secretary anticipates that federal courts will apply such principles if a complainant brings a new action in federal court following extensive litigation before the Department that has resulted in a decision by an ALJ or the Secretary. Where an administrative hearing has been completed and a matter is pending before an ALJ or the Board for a decision, a federal court also might treat a complaint as a petition for mandamus and order the Department to issue a decision under appropriate time frames.

Section 24.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the Board may, upon application and notice to the parties, waive any rule as justice or the administration of the statutes listed in § 24.100(a) requires.

APPENDIX A—Your Rights Under the ERA

The notice that employers are required to post under section 211(i) of the ERA has been revised to reflect the 2005 amendments. Specifically, the notice now reflects that the definition of ''employer'' has been expanded and that the employee has a right to file a complaint in district Court if the Secretary has not issued a final decision within one year of the filing of the complaint and the delay is not due to the bad faith of the employee. As noted above, we also have substituted the term ''retaliation'' for ''discrimination.''

V. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, § 24.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

VI. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act (''APA'') do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice[.]'' 5 U.S.C. 553(b)(A). This is a rule of agency procedure and practice within the meaning of Section 553(b)(A) of the APA; the agency does not have legislative rulemaking authority under the applicable statutes. Therefore publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required. Although this rule is not subject to the notice and comment procedures of the APA, we are providing persons interested in this interim final rule 60 days to submit comments. In so doing, we are following the agency's practice when it recently promulgated rules for the handling of whistleblower complaints under SOX, AIR21, and PSIA. Specifically, those rules, procedural in nature like this rule, were published as interim final rules; however, persons were given 60 days in which to submit comments. The Department carefully reviewed those comments and then issued its final rules. Similarly, in this instance, a final rule will be published after the agency receives and carefully reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VII. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866 because it is not likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

VIII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation primarily implements procedures necessitated by statutory amendments enacted by Congress. Additionally, the regulatory revisions are necessary for the sake of consistency with the regulatory provisions governing procedures under the other whistleblower statutes administered by

the Secretary. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation. This document was prepared under the direction of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 24

Administrative practice and procedure, Employment, Environmental Protection, Investigations, Reporting and recordkeeping requirements, Whistleblowing.

Signed in Washington, DC, this 2nd day of August, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble part 24 of title 29 of the Code of Federal Regulations is revised to read as follows:

PART 24—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

Subpart A—Complaints, Investigations, Issuance of Findings

Sec.

24.100 Purpose and scope.
24.101 Definitions.
24.102 Obligations and prohibited acts.
24.103 Filing of retaliation complaint.
24.104 Investigation.
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Subpart B—Litigation

24.106 Objections to the findings and order and request for a hearing.
24.107 Hearings.
24.108 Role of Federal agencies.
24.109 Decision and orders of the administrative law judge.
24.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

24.111 Withdrawal of complaints, objections, and findings; settlement.
24.112 Judicial review.
24.113 Judicial enforcement.
24.114 District court jurisdiction of retaliation complaints under the Energy Reorganization Act.
24.115 Special circumstances; waiver of rules.
Appendix A to Part 24—Your Rights Under the Energy Reorganization Act.

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j–9(i), 5851, 6971, 7622, 9610.

Subpart A—Complaints, Investigations, Issuance of Findings

§ 24.100 Purpose and scope.

(a) This part implements procedures under the employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Federal Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

(b) This part establishes procedures pursuant to the federal statutory provisions listed in paragraph (a) of this section for the expeditious handling of retaliation complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under the federal statutory provisions listed in paragraph (a) of this section, investigations, issuance of findings, objections to findings, litigation before administrative law judges, issuance of decisions and orders, post-hearing administrative review, and withdrawals and settlements.

§ 24.101 Definitions.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under any of the statutes listed in § 24.100(a).

Complainant means the employee who filed a complaint under any of the statutes listed in § 24.100(a) or on whose behalf a complaint was filed.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Respondent means the employer named in the complaint, who is alleged to have violated any of the statutes listed in § 24.100(a).

Secretary means the Secretary of Labor or persons to whom authority under any of the statutes listed in § 24.100(a) has been delegated.

§ 24.102 Obligations and prohibited acts.

(a) No employer subject to the provisions of any of the statutes listed in § 24.100(a), or to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, may discharge or otherwise retaliate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.

(b) It is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner retaliate against any employee because the employee has:

(1) Commenced or caused to be commenced, or is about to commence or cause to be commenced, a proceeding under one of the statutes listed in § 24.100(a) or a proceeding for the administration or enforcement of any requirement imposed under such statute;

(2) Testified or is about to testify in any such proceeding; or

(3) Assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other action to carry out the purposes of such statute.

(c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in § 24.100(a), it is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner retaliate against any employee because the employee has:

(1) Notified the employer of an alleged violation of such statute or the AEA of 1954;

(2) Refused to engage in any practice made unlawful by such statute or the AEA of 1954, if the employee has identified the alleged illegality to the employer; or

(3) Testified or is about to testify before Congress or at any federal or state proceeding regarding any provision (or proposed provision) of such statute or the AEA of 1954.

(d)(1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the employee protection provisions of the Act apply, a fully legible copy of the notice prepared by OSHA, printed as appendix A to this part, or a notice approved by the Assistant Secretary that contains substantially the same provisions and explains the employee protection provisions of the Act and the regulations in this part. Copies of the notice prepared by OSHA may be obtained from the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, from local OSHA offices, or from OSHA's Web site at *http://www.osha.gov.*

(2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in § 24.103(d)(2) that a complaint be filed with the Assistant Secretary within 180 days of an alleged violation will be inoperative, unless the respondent establishes that the complainant had knowledge of the material provisions of the notice. If it is established that the notice was posted at the employee's place of employment after the alleged retaliatory action occurred or that the complainant later obtained knowledge of the provisions of the notice, the 180 days will ordinarily run from whichever of those dates is relevant.

(e) This part shall have no application to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of any of the statutes listed in § 24.100(a) or the AEA of 1954.

§ 24.103 Filing of retaliation complaint.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by an employer in violation of any of the statutes listed in § 24.100(a) may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of Filing.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) *Place of Filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for Filing.* (1) Except as provided in paragraph (d)(2) of this section, within 30 days after an alleged violation of any of the statutes listed in § 24.100(a) occurs (i.e., when the retaliatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been retaliated against in violation of any of the statutes listed in § 24.100(a) may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(2) Under the Energy Reorganization Act, within 180 days after an alleged violation of the Act occurs (i.e., when the retaliatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been retaliated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(e) *Relationship to section 11(c) complaints.* A complaint filed under any of the statutes listed in § 24.100(a) alleging facts that would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be both a complaint filed under any of the statutes listed in § 24.100(a) and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of any of the statutes listed in § 24.100(a) will be deemed to be both a complaint filed under any of the statutes listed in § 24.100(a) and section 11(c). Normal procedures and timeliness requirements for investigations under the respective statutes and regulations will be followed.

§ 24.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). A copy of the notice to the respondent will also be provided to the appropriate office of the federal agency charged with the administration of the general provisions of the statute(s) under which the complaint is filed.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with 29 CFR part 70.

(d) *Investigation under the six environmental statutes.* In addition to the investigative procedures set forth in § 24.104(a), (b), and (c), this paragraph sets forth the procedures applicable to investigations under the Safe Drinking Water Act; Federal Water Pollution Control Act; Toxic Substances Control Act; Solid Waste Disposal Act; Clean Air Act; and Comprehensive Environmental Response, Compensation and Liability Act.

(1) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected activity was a motivating factor in the unfavorable personnel action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a motivating factor in the unfavorable action.

(3) The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, i.e., to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a motivating factor in the unfavorable personnel action. The burden may be satisfied, for example, if the complainant shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a motivating factor in the adverse action.

(4) The complaint will be dismissed if the respondent demonstrates by a preponderance of the evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected activity.

(e) *Investigation under the Energy Reorganization Act.* In addition to the investigative procedures set forth in § 24.104(a), (b), and (c), this paragraph sets forth special procedures applicable

only to investigations under the Energy Reorganization Act.

(1) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, i.e., to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. The burden may be satisfied, for example, if the complainant shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted or will be discontinued if the respondent, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct.

(5) If the respondent fails to make a timely response or fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

§ 24.105 Issuance of findings and orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 30 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has discriminated against the complainant in violation of any of the statutes listed in § 24.100(a).

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with an order providing relief to the complainant. The order shall include, where appropriate, a requirement that the respondent abate the violation; reinstate the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; pay compensatory damages; and, under the Toxic Substances Control Act and the Safe Drinking Water Act, pay exemplary damages, where appropriate. Where the respondent establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), an order of reinstatement would not be appropriate. At the complainant's request the order shall also assess against the respondent the complainant's costs and expenses (including attorney's fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing and provide the address of the Chief Administrative Law Judge. The Assistant Secretary will file a copy of the original complaint and a copy of the findings and order with the Chief Administrative Law Judge, U.S. Department of Labor.

(c) The findings and order will be effective 30 days after receipt by the respondent pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 24.106.

Subpart B—Litigation

§ 24.106 Objections to the findings and order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and order must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and order pursuant to paragraph (b) of § 24.105. The objection and/or request for a hearing must be in writing and state whether the objection is to the findings and/or the order. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, 200 Constitution Ave., NW., N 2716, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely objection is filed, all provisions of the order will be stayed. If no timely objection is filed with respect to either the findings or the order, the findings and order will become the final decision of the Secretary, not subject to judicial review.

§ 24.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, 29 CFR part 18.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated, and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed

to assure production of the most probative evidence available will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 24.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding. At the Assistant Secretary's discretion, he or she may participate as a party or participate as amicus curiae at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210.

(b) The Environmental Protection Agency, the Nuclear Regulatory Commission, and the Department of Energy, if interested in a proceeding, may participate as amicus curiae at any time in the proceedings, at the agency's discretion. At the request of the interested federal agency, copies of all pleadings in a case must be sent to the federal agency, whether or not the agency is participating in the proceeding.

§ 24.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (c) of this section, as appropriate. In cases arising under the ERA, a determination that a violation has occurred may only be made if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint. In cases arising under the other six statutes listed in § 24.100(a), a determination that a violation has occurred may only be made if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a motivating factor in the unfavorable personnel action alleged in the complaint.

(b) In cases under the Energy Reorganization Act, if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected activity. In cases under the other six statutes listed in § 24.100(a), even if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a motivating factor in the unfavorable personnel action alleged in the complaint, relief may not be ordered if the respondent demonstrates by a preponderance of the evidence that it would have taken the same unfavorable personnel action in the absence of any protected activity.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 24.104(d) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(d)(1) If the administrative law judge concludes that the respondent has violated the law, the order shall direct the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the administrative law judge shall assess against the respondent, all costs and expenses (including attorney fees) reasonably incurred.

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a decision that the complaint has merit and orders the relief prescribed in paragraph (d)(1) of this section, the relief ordered, with the exception of compensatory damages, shall be effective immediately upon receipt, whether or not a petition for review is filed with the Administrative Review Board.

(3) If the administrative law judge determines that the respondent has not violated the law, an order will be issued denying the complaint.

(e) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision issued under any of the statutes listed in § 24.100(a) will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board. An administrative law judge's order issued under the Energy Reorganization Act will be effective immediately upon receipt, except for that portion of the order awarding any compensatory damages.

§ 24.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge must file a written petition for review with the Administrative Review Board (''the Board''), U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. A petition must be filed within 10 business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, and the Board, within 30 days of the filing of the petition, issues an

order notifying the parties that the case has been accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that an order by an administrative law judge issued under the Energy Reorganization Act, other than that portion of the order awarding compensatory damages, will be effective while review is conducted by the Board, unless the Board grants a motion by the respondent to stay the order based on exceptional circumstances. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard. If a timely petition for review is *not* filed, or the Board denies review, the decision of the administrative law judge will become the final order of the Secretary and is not subject to judicial review.

(c) The final decision of the Board will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the respondent has violated the law, the final order will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the Board will assess against the respondent all costs and expenses (including attorney's fees) reasonably incurred.

(e) If the Board determines that the respondent has not violated the law, an order will be issued denying the complaint.

Subpart C—Miscellaneous Provisions

§ 24.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings and/or order, a complainant may withdraw his or her complaint under any of the statutes listed in § 24.100(a) by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the respondent of the approval of any withdrawal. If the complaint is withdrawn because of settlement under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, or the Toxic Substances Control Act, the settlement must be submitted for approval in accordance with paragraph (d) of this section. Parties to settlements under the Federal Water Pollution Control Act, the Solid Waste Disposal Act, and the Comprehensive Environmental Response, Compensation and Liability Act are encouraged to submit their settlements for approval.

(b) The Assistant Secretary may withdraw his or her findings and/or order, at any time before the expiration of the 30-day objection period described in § 24.106, provided that no objection has yet been filed, and substitute new findings and/or a new order. The date of the receipt of the substituted findings and/or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge, or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, or the Toxic Substances Control Act, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement must be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute the final order of the Secretary and may be enforced pursuant to § 24.113.

§ 24.112 Judicial review.

(a) Except as provided under paragraphs (b), (c), and (d) of this section, within 60 days after the issuance by the Board of a final order of the Secretary under § 24.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) Under the Federal Water Pollution Control Act, within 120 days after the issuance by the Board of a final order of the Secretary under § 24.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(c) Under the Solid Waste Disposal Act, within 90 days after the issuance by the Board of a final order of the Secretary under § 24.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(d) Under the Comprehensive Environmental Response, Compensation and Liability Act, after the issuance by the Board of a final order of the Secretary under § 24.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States district court in which the violation allegedly occurred. For purposes of judicial economy and consistency, when a final order of the Secretary issued by the Board under the Comprehensive

Environmental Response, Compensation and Liability Act also is issued under any other statute listed in § 24.100(a), the adversely affected or aggrieved person may file a petition for review of the entire order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. The time for filing a petition for review of an order issued under the Comprehensive Environmental Response, Compensation and Liability Act and any other statute listed in § 24.100(a) is determined by the time period applicable under the other statute(s).

(e) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the local rules of the court.

§ 24.113 Judicial enforcement.

Whenever any person has failed to comply with an order by an administrative law judge issued under the Energy Reorganization Act, with the exception of any award of compensatory damages, or with a final order of the Secretary issued by the Board, including final orders approving settlement agreements as provided under § 24.111(d), the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. Whenever any person has failed to comply with an order by an administrative law judge issued under the Energy Reorganization Act, with the exception of any award of compensatory damages, or with a final order of the Secretary issued by the Board under either the Energy Reorganization Act or the Clean Air Act, the person on whose behalf the order was issued also may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 24.114 District court jurisdiction of retaliation complaints under the Energy Reorganization Act.

(a) If the Board has not issued a final decision within one year of the filing of a complaint under the Energy Reorganization Act, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in federal court, a complainant must file with the Assistant Secretary, the administrative law judge, or the Board, depending upon where the proceeding is pending, a notice of his or her intention to file such complaint. The notice must be served on all parties to the proceeding. A copy of the notice must be served on the Regional Administrator, the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210.

§ 24.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of any of the statutes listed in § 24.100(a) requires.

Appendix A to Part 24—Your Rights Under the Energy Reorganization Act

BILLING CODE 4510–26–P

Your Rights under the Energy Reorganization Act

The Energy Reorganization Act (ERA), makes it illegal to discharge or otherwise retaliate against an employee in terms of compensation, conditions, or privileges of employment because the employee or any person acting at an employee's request engages in protected activity.

Employers covered by the ERA are:

- The Nuclear Regulatory Commission (NRC)
- A contractor or subcontractor of the NRC
- A licensee of the NRC or an agreement state, and the licensee's contractors and subcontractors
- An applicant for a license, and the applicant's contractors and subcontractors
- The Department of Energy (DOE)
- A contractor or subcontractor of the DOE under the Atomic Energy Act (AEA)

You are engaged in protected activity when you:

- Notify your employer of an alleged violation of the ERA or the AEA
- Refuse to engage in any practice made unlawful by the ERA or the AEA
- Testify before congress or at any federal or state proceeding regarding any provision or proposed provision of the ERA or the AEA
- Commence or cause to be commenced a proceeding under the ERA, or a proceeding for the administration or enforcement of any requirement imposed under the ERA
- Testify or are about to testify in any such proceeding
- Assist or participate in such a proceeding or in any other action to carry out the purposes of the ERA or the AEA

Employers may not retaliate against you for engaging in protected activity by:

- Intimidating
- Threatening
- Restraining
- Coercing
- Blacklisting
- Firing
- or in any other manner retaliating against you

Filing a complaint: You may file a complaint ***within 180 days*** of the retaliatory action. A complaint must be ***in writing*** and may be in person or by mail at the nearest local office of the Occupational Safety and Health Administration (OSHA), Department of Labor (DOL), or with the office of the Assistant Secretary, OSHA, U.S. Department of Labor, Washington, D.C. 20210.

If DOL has not issued a final decision within one year of the filing of the complaint, you have the right to file the complaint in district court for de novo review, so long as the delay is not due to your bad faith.

For additional information: Contact OSHA (listed in telephone directories), or see the agency's web site at: www.osha.gov.

Employers are required to display this poster where employees can readily see it.

[FR Doc. E7–15539 Filed 8–9–07; 8:45 am]
BILLING CODE 4510–26–C

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2560

RIN 1210–AB23

Amendments to Civil Penalties Under ERISA Section 502(c)(7)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Direct final rule.

SUMMARY: This document contains a direct final rule amending the civil penalty regulation under section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) to reflect recent amendments to this section in the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA). These amendments authorize the Secretary of Labor to assess civil penalties not to exceed $100 per day for each violation of section 101(m) of ERISA. Section 101(m) of ERISA requires plan administrators of individual account plans to notify participants and beneficiaries of their right to sell the company stock in their accounts and reinvest the proceeds into other investments available under the plan. The notice must also inform the recipients of the importance of diversifying the investments in their accounts.

DATES: The amendments made by this rule are effective October 9, 2007, without further action or notice, unless significant adverse comment is received by September 10, 2007. If significant adverse comment is received, the Employee Benefits Security Administration will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: 502(c)(7) Civil Penalty. Comments received will be posted without change, including any personal information provided, to *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and also available for public inspection at the Public Disclosure Room, Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Pension Protection Act of 2006

On August 17, 2006, the Pension Protection Act (PPA) amended the Internal Revenue Code (the Code) and ERISA to provide diversification rights to plan participants and beneficiaries with respect to investments in company stock in their accounts. Section 401(a)(35) of the Code, as added by section 901 of the PPA, provides that, to remain qualified under section 401(a) of the Code, a defined contribution plan (other than certain employee stock ownership plans) must provide applicable individuals with the right to divest employer securities in their accounts and reinvest those amounts in certain diversified investments. Section 901 of the PPA also added a parallel provision, section 204(j), to ERISA.[1]

Section 507(a) of the PPA amended section 101 of ERISA by adding subsection (m) which requires a plan administrator to provide applicable individuals with a notice of diversification rights under section 204(j) of ERISA. Plan administrators must provide this notice not later than 30 days before the first date on which the individuals are eligible to exercise their rights. The notice must set forth the diversification rights provided under section 401(a)(35) of the Code (and parallel section 204(j) of ERISA) and describe the importance of diversifying the investment of retirement account assets. Section 101(m) of ERISA is effective for plan years beginning after December 31, 2006.

Section 507(b) of the PPA amended section 502(c)(7) of ERISA to provide that the Secretary of Labor may assess a civil penalty of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to an applicable individual in accordance with ERISA section 101(m).

I.R.S. Notice 2006–107

Section 507(c) of the PPA directed the Secretary of the Treasury to create a model notice of diversification rights that would satisfy the requirements of section 101(m) of ERISA.[2] On December 18, 2006, the IRS published Notice 2006–107, which provides transitional guidance on section 401(a)(35) of the Code (and parallel section 204(j) of ERISA). Notice 2006–107 describes the notice requirement of section 101(m) of ERISA and provides a model notice for plans to comply with this requirement.[3] The Notice states that, although some plans will be required to comply with section 401(a)(35) as early as January 1, 2007, the Department has advised Treasury and the IRS that section 101(m) of ERISA does not require plans to furnish notices before January 1, 2007. The Notice states that, accordingly, plans with plan years beginning on or after January 1, 2007, but before February 1, 2007, are not required to furnish the model notice (or a notice otherwise meeting the requirements of section 101(m) of ERISA) earlier than January 1, 2007. Notice 2006–107 also states that the Department encourages plans to furnish notice on the earliest possible date.[4] The IRS Notice and model are available at *http://www.irs.gov/irb/2006–51_IRB/ar09.html*.

B. Overview of Amendments to § 2560.502c–7

The direct final rule being published today as part of this notice makes conforming changes to 29 CFR 2560.502c–7, reflecting changes required by ERISA section 502(c)(7), as amended by the PPA. The conforming amendments do not change the existing penalty assessment procedures or the related procedures for contesting penalty assessments. Rather, the changes merely extend the Secretary's existing procedures for assessing civil penalties for violations of section 101(i)

[1] Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over section 204(j) of ERISA.

[2] Section 101(m) of ERISA is under the jurisdiction of the Department of Labor.

[3] I.R.S. Notice 2006–107, 2006–51 I.R.B. 1114.

[4] For additional information, see the Employee Benefits Security Administration Field Assistance Bulletin No. 2006–03 (December 20, 2006) at *http://www.dol.gov/ebsa/regs/fabmain.html*.

of ERISA, relating to blackout notices, to include violations of the notice requirements in section 101(m) of ERISA, relating to diversification rights. These conforming changes primarily add references to section 101(m) next to existing references to section 101(i) throughout the regulation. For an overview of the provisions of § 2560.502c–7, see the preamble to that regulation published on January 24, 2003, at 68 FR 3729.

C. Good Cause Finding That Proposed Rulemaking Unnecessary

Rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule. However, an agency may issue a rule without prior notice and comment procedures if it determines for good cause that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest for such rule, and incorporates a statement of the finding with the underlying reasons in the final rule issued. For the reasons mentioned in section B of this preamble, the Department finds that publishing a proposed rule and seeking public comment is unnecessary.

Notwithstanding the foregoing, in the ''Proposed Rules'' section of today's **Federal Register**, the Department is publishing a separate document that will serve as a notice of proposal to amend part 2560 as described in this direct final rule. If the Department receives significant adverse comment during the comment period it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. The Department will then address public comments in a subsequent final rule based on the proposed rule. The Department will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

D. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget. Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, it has been determined that this regulatory action is significant under section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed this regulation.

The principal benefit of the statutory penalty provision and the direct final rule is greater adherence to the new disclosure requirement. The implementation of orderly and consistent processes for the assessment of penalties and the review of such assessments also will be beneficial. The civil penalty provisions of the statute and this direct final rule impose no mandatory requirements or costs, except where a plan administrator has failed to provide the notice as required. Therefore, the Department finds that the benefits of the direct final rule justify its costs. The Department invites comments on this assessment and its conclusion.

Paperwork Reduction Act

This direct final rule regarding the Secretary's authority to assess civil penalties under ERISA section 502(c)(7) is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*) because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). Information otherwise provided to the Secretary in connection with the administrative and procedural requirements of this direct final rule is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Because these amendments are being published as a direct final rule, without prior notice and comment, the RFA does not apply. Moreover, compliance with the procedures in this rule is not likely to impose a significant additional cost on a substantial number of small employers or plans. Accordingly, the Department believes that no regulatory flexibility analysis would be required in any case under the RFA.

Congressional Review Act

The direct final rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the direct final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the final rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

■ For the reasons set forth in the preamble, the Department amends 29 CFR part 2560 as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 1. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133. Sec. 2560.502(c)(7) also issued under sec. 507(b) of Pub. L. 109–280, 120 Stat. 780.

■ 2. Amend § 2560.502c–7 by revising paragraphs (a), (b), (d) and (j)(1) to read as follows:

§ 2560.502c–7 Civil penalties under section 502(c)(7).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an individual account plan (within the meaning of section 101(i)(8) of the Act and § 2520.101–3(d)(2) of this chapter), who fails or refuses to provide notice of a blackout period to affected participants and beneficiaries in accordance with section 101(i) of the Act and § 2520.101–3 of this chapter, or the administrator (within the meaning of section 3(16)(A) of the Act) of an applicable individual account plan (within the meaning of section 101(m) of the Act), who fails or refuses to provide notice of diversification rights to applicable individuals in accordance with section 101(m) of the Act, shall be liable for civil penalties assessed by the Secretary under section 502(c)(7) of the Act.

(2) For purposes of this section, a failure or refusal to provide a notice of blackout period shall mean a failure or refusal, in whole or in part, to provide notice of a blackout period to an affected plan participant or beneficiary at the time and in the manner prescribed by section 101(i) of the Act and § 2520.101–3 of this chapter, and a failure or refusal to provide a notice of diversification rights shall mean a failure or refusal, in whole or in part, to provide notice of diversification rights to an applicable individual at the time and in the manner prescribed by section 101(m) of the Act.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(7) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to provide a notice of blackout period or notice of diversification rights. However, the amount assessed for each violation under section 502(c)(7) of the Act shall not exceed $100 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from, in the case of a notice of blackout period under section 101(i) of the Act, the date of the administrator's failure or refusal to provide a notice of blackout period up to and including the date that is the final day of the blackout period for which the notice was required, or in the case of a notice of diversification rights under section 101(m) of the Act, computed from the date that is 30 days before the first date on which rights are exercisable under section 204(j) of the Act up to the date such a notice is furnished.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to provide a notice of blackout period or a notice of diversification rights with respect to any single participant or beneficiary shall be treated as a separate violation under section 101(i) of the Act and § 2520.101–3 of this chapter or section 101(m) of the Act.

* * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the applicable requirements of section 101(i) or section 101(m) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

* * * * *

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to provide a notice of blackout period under section 101(i) of the Act and its implementing regulations (§ 2520.101–3 of this chapter), or the failure to provide a notice of diversification rights under section 101(m) of the Act, all such persons shall be jointly and severally liable for such failure.

* * * * *

Signed at Washington, DC, this 3rd day of August, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–15567 Filed 8–9–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Key West Harbor, at U.S. Naval Base, Key West, Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending the existing regulations for a restricted area at Naval Air Station Key West (NASKW). Naval Air Station Key West maintains ammunition magazines on Fleming Island that have explosive safety quality-distance (ESQD) requirements in place to ensure reasonable safety from serious injury should there be a magazine fire or explosion. The previous restricted area regulations did not adequately cover the ESQD requirements. This amendment to the existing regulation is necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

DATES: *Effective Date:* September 10, 2007.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr.

Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

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 is amending the regulations in 33 CFR part 334 by modifying the restricted area at § 334.610. The modification to the existing restricted area is described below. The proposed rule was published in the February 21, 2007, issue of the **Federal Register** (72 FR 7841). One comment was received in response to the proposed rule. That commenter had no objection to the proposed amendment.

The Ammunition and Hazardous Materials Handling Review Board has cited NASKW for allowing anchored pleasure craft to be within the inhabited building distance of the Fleming Island Magazine area. The amendment to the regulations will allow the Commanding Office NASKW to restrict passage of persons, watercraft, and vessels to ensure that ESQD requirements related to the Fleming Island Magazine area are met.

Procedural Requirements

a. *Review Under Executive Order 12866.* This 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 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 has concluded that modifying this restricted area would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, it is certified that this rule will not have a significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps has concluded, based on the minor nature of this action, that the amendment to the restricted area will not be a major Federal action having significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared and it is available by contacting the district office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 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. Amend § 334.610 by revising paragraph (a)(4) to read as follows:

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted areas and danger zone.

(a) *The areas.* * * *

(4) Beginning at the last point designated in area 3 at Latitude 24°34.0550′ N., Longitude 81°47.9166′ W.; proceed in a northwesterly direction to a point at Latitude 24°34.2725′ N., Longitude 81°48.1304′ W.; thence proceed in a northeasterly direction to a point at Latitude 24°34.3562′ N., Longitude 81°48.0192′ W.; thence proceed in a northwesterly direction to a point at Latitude 24°34.4506′ N., Longitude 81°48.1444′ W.; thence proceed in a northwesterly direction to a point at Latitude 24°34.5619′ N., Longitude 81°48.1873′ W.; thence proceed in a northeasterly direction to a point at Latitude 24°34.9084′ N., Longitude 81°48.0945′ W.; thence proceed in a northeasterly direction to a point at Latitude 24°34.9809′ N., Longitude 81°47.9400′ W.; proceed in a general northerly direction maintaining a distance of 100 yards from the shoreline of Fleming Key, continue around Fleming Key to a point easterly of the southeast corner of Fleming Key at Latitude 24°34.0133′ N., Longitude 81°47.6250′ W.; thence easterly to Latitude 24°33.9600′ N., Longitude 81°47.3333′ W.; thence southerly to a point on the shore at Latitude 24°33.9117′ N., Longitude 81°47.3450′ W. The Department of the Navy plans to install buoys along that portion of the restricted area boundary which marks the outer edge of the explosive hazard safety distance requirements.

* * * * *

Dated: August 6, 2007.

Lawrence A. Lang,

Acting Chief, Operations Directorate of Civil Works.

[FR Doc. E7–15694 Filed 8–9–07; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2007–0016; FRL–8451–8]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA is granting Final authorization to Florida. EPA is authorizing the changes by this immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of this immediate final rule. Unless we get written comments which oppose this authorization during the comment period, this immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw this immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this immediate final rule. You may not have another opportunity for comment.

DATES: This Final authorization is effective on October 9, 2007 unless EPA receives adverse written comment on or before September 10, 2007. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–

RCRA–2007–0016 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: johnson.otis@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Otis Johnson, Permit and State Programs Section, RCRA Programs/Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.
- *Hand Delivery:* Otis Johnson, Permit and State Programs Section, RCRA Programs/Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Permit and State Programs Section, RCRA Programs/Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303; telephone number: (404) 562–8481; fax number: (404) 562–9964; e-mail address: *johnson.otis@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in This Rule?

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

C. What Is the Effect of This Authorization Decision?

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

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

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

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

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

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

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Florida Previously Been Authorized for?

Florida initially received Final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 1, 1987, effective March 3, 1988 (52 FR 45634), December 16, 1988, effective January 3, 1989 (53 FR 50529), December 14, 1990, effective February 12, 1991 (55 FR 51416), February 5, 1992, effective April 6, 1992 (57 FR 4371), February 7, 1992, effective April 7, 1992 (57 FR 4738), May 20, 1992, effective July 20, 1992 (57 FR 21351), November 9, 1993, effective January 10, 1994 (58 FR 59367), July 11, 1994, effective September 9, 1994 (59 FR 35266), August 16, 1994, effective October 17, 1994 (59 FR 41979), October 26, 1994, effective December 27, 1994 (59 FR 53753), April 1, 1997, effective June 2, 1997 (62 FR 15407), August 23, 2001, effective October 22, 2001 (66 FR 44307), August 20, 2002, effective October 21, 2002 (67 FR 53886 and 67 FR 53889), and October 14, 2004, effective December 13, 2004. The authorized Florida program, through RCRA Cluster IV, was incorporated by reference into the CFR on January 20, 1998, effective March 23, 1998 (63 FR 2896). Florida received corrective action authority on September 18, 2000, effective November 18, 2000 (65 FR 56256).

G. What Changes Are We Authorizing With This Action?

Florida has submitted final complete program revision applications on seeking authorization of their changes in accordance with 40 CFR 271.21. Florida's revision consists of provisions promulgated July 1, 2000 through June

30, 2005, otherwise known as RCRA Clusters XI–XV.

Florida Statutes Chapter 403 allows the Florida Department of Environmental Protection to administer the rules governing hazardous waste management in the State. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant Florida Final authorization for the following program changes:

Description of Federal requirement	Federal Register	Analogous state authority
Checklist 188, Hazardous Air Pollutants Standards; technical corrections.	July 10, 2000, 65 FR 42292–42302; May 14, 2001, 66 FR 24270–24272; July 3, 2001, 66 FR 35087–35107.	Rules 62–730.030(1), 62–730.180(4), Florida Administrative Code (F.A.C.).
Checklist 189, Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes.	November 8, 2000, 65 FR 67068–67133	Rules 62–730.030(1), 62–730.183(1), F.A.C.
Checklist 191, Mixed Waste Rule	May 16, 2001, 66 FR 27218–27266	Rule 62–730.181(1), F.A.C.
Checklist 192 A, Mixture and Derived-From Rules Revisions.	May 16, 2001, 66 FR 27266–27297	Rule 62–730.030(1), F.A.C.
Checklist 192 B, Land Disposal Restrictions Correction.	May 16, 2001, 66 FR 27266–27297	Rule 62–730.183(1), F.A.C.
Checklist 193, Change of Official EPA Mailing Address.	June 28, 2001, 66 FR 34374–34376	Rule 62–730.021(1)(a), F.A.C.
Checklist 194, Mixture and Derived-From Rules Revision II.	October 3, 2001, 66 FR 50332–50334	Rule 62–730.030(2), F.A.C.
Checklist 195, Inorganic Chemical Manufacturing Wastes Identification and Listing.	November 20, 2001, 66 FR 58258–58300; April 9, 2002, 67 FR 17119–17120.	Rules 62–730.030(2), 62–730.183(2), F.A.C.
Checklist 196, CAMU Amendments	January 22, 2002, 67 FR 2962–3029	Rules 62–730.020(1), 62–730.180(4), F.A.C.
Checklist 197, Hazardous Air Pollutant Standards for Combustors: Interim Standards.	February 13, 2002, 67 FR 6792–6818	Rules 62–730.180(4), 62–730.181(1), 62–730.220(3), F.A.C.
Checklist 198, Hazardous Air Pollutant Standards for Combustors: Corrections.	February 14, 2002, 67 FR 6968–6996	Rule 62–730.181(1), F.A.C.
Checklist 199, Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste.	March 13, 2002 67 FR 11251–11254	Rule 62–730.030(2), F.A.C.
Checklist 200, Zinc Fertilizer Rule	July 24, 2002, 67 FR 48393–48415	Rules 62–730.030(1), 62–730.181(1), 62–730.183, F.A.C.
Checklist 201, Treatment Variance for Radioactively Contaminated Batteries.	October 7, 2002, 67 FR 62618–62624	Rule 62–730.183, F.A.C.
Checklist 202, Hazardous Air Pollutant Standards for Combustors-Corrections 2.	December 19, 2002, 67 FR 77687–77692	Rule 62–730.220(3), F.A.C.
Checklist 203, Recycled Used Oil Management Standards: Clarification.	July 30, 2003, 68 FR 44659–44665	Rules 62–730.030(1), 62–710.210(2), F.A.C.
Checklist 204, Performance Track	April 22, 2004, 69 FR 21737–21754 as amended on October 25, 2004; 69 FR 62217–62224.	Rule 62–730.160(1), F.A.C.
Checklist 205, NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.	April 26, 2004, 69 FR 22601–22661	Rules 62–730.180(1), 62–730.180(2), F.A.C.
Checklist 206, Nonwastewaters from Dyes and Pigments.	February 24, 2005, 70 FR 9138–9180	Rules 62–730.030(1), 62–730.183, F.A.C.
Checklist 207, Uniform Hazardous Waste Manifest Rule.	March 4, 2005, 70 FR 10776–10825	Rules 62–730.020(1), 62–730.030(1), 62–730.160(1), 62–730.170(1), 62–730.180(1), 62–730.180(2), F.A.C.
Methods Innovation Rule	June 14, 2005, 70 FR 34537–34592 as amended August 1, 2005, 70 FR 44150.	Rules 62–730.021, 62–730.030(1), 62–730.180(1), 62–730.180(2), 62–730.181(1), 62–730.183, 62–730.220(1), F.A.C.

H. Where Are the Revised State Rules Different From the Federal Rules?

Florida did not adopt did not adopt the optional amendments in 270.42(j)(l) in Checklist 188 and 198 for permit modifications at the request of the permittee. Rule 62–730.290(1)(d), F.A.C., states that the Department may require permit modifications for the causes set forth in 40 CFR 270.41 and 270.42. Accordingly, Florida did not adopt the optional amendment in Checklist 198 pertaining to permit modifications at the request of the permittee.

I. Who Handles Permits After the Authorization Takes Effect?

Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not yet authorized.

J. What Is Codification and Is EPA Codifying Florida's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart K for this authorization of Florida's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA Section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 1985, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

This action will be effective October 9, 2007.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 13, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–15670 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 07–08]

RIN 3072–AC32

Optional Method of Filing Form FMC–18, Application for a License as an Ocean Transportation Intermediary

August 6, 2007.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') amends its regulations relating to the method of filing Form FMC–18, Application for a License as an Ocean Transportation Intermediary (''OTI''), to provide for optional filing of OTI applications through a new electronic filing system. This optional filing system is intended to facilitate more efficient processing and review of applications for licensing. A filing fee of $250 will apply to new applicants for OTI licensing, and $125 for existing licensees who might want to use the optional electronic filing system to update their licensing records or to submit changes in the licensee's organization for which prior Commission approval is required.

DATES: Effective September 24, 2007.

FOR FURTHER INFORMATION CONTACT:

Sandra Kusumoto, Director, Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5787, E-mail: *SKusumoto@fmc.gov.*

Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740, E-mail: *GeneralCounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

By Notice of Inquiry in Docket No. 01–08, the Commission first solicited comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. Comments received in response to the Notice were supportive and encouraging of the Commission's efforts to provide expanded electronic filing options for information collections.

Responsive to comments filed in reply to that inquiry, the Commission signaled its intent to embark upon an E-government strategy which focuses on automating as many documents and

processes (both internal and external) as possible, and facilitating greater access to Commission information, forms and applications. The Commission concluded therein that establishing electronic options for most of its information collection processes was both viable and prudent. Since that time, the Commission has commenced an initiative for publishing electronic copies of Commission decisions; approved procedures by which non-vessel-operating common carriers (''NVOCCs'') may file electronic copies of NVOCC Service Arrangements (''NSAs''); upgraded the SERVCON system for filers of service contracts and NSAs; reorganized and updated the Commission's Web site at *http://www.fmc.gov* to improve transparency and accessibility to information; authorized the filing of agreement minutes and monitoring reports in electronic format, etc. The Commission's Annual Performance Plan envisions the continued use of technological enhancements to improve efficiency and facilitate the exchange of information within the Commission and between the Commission and the shipping industry.

Working in conjunction with the Commission's Office of Information Technology, the Bureau of Certification and Licensing (''BCL'') commenced efforts in 2005 to automate the process of filing its application for OTI licensing, Form FMC–18. Under existing 46 CFR 515.12, this application is submitted entirely in paper format, in duplicate. Supporting documentation required by the application process likewise must be filed in paper format.

BCL recently completed the initial software development and associated testing to support an automated application filing system. The Commission now proposes to make BCL's automated filing system available as an optional method by which to file Form FMC–18. Use of the automated system will not be required; interested parties may continue to submit Form FMC–18 in paper format and those filings will be received and processed in the same manner as before.

As developed by the Office of Information Technology and its contractors, the new automated filing system will facilitate the filing of Form FMC–18 in electronic format. Supporting documentation previously submitted in paper form will be appended electronically as part of the filing process. Validity checks incorporated into the automated filing process will alert the filer to the need to submit missing documentation at time of filing, thereby ensuring a more complete application and facilitating quicker processing of OTI applications by BCL staff. A visually cleaner and more helpful electronic interface also has been implemented to guide and assist the filing applicant in completing the application.

The automated OTI filing system may be accessed through the Commission's Web site, *http://www.fmc.gov.* The filing system is password-protected to ensure the security of information being collected and to appropriately restrict external access to data to the applicant and its authorized filing agents. Both applicants for initial OTI licensing and current licensees seeking to amend or add an additional service (i.e., add NVOCC authority to an existing freight forwarder license) to their existing authority/license can make use of the automated filing system on an optional basis. Following implementation of automated filing on a voluntary basis, further automation of licensing-related functions, such as the use of e-signature technology, electronic filing of bonds and electronic payment options for fees, may be addressed by the Commission in future rulemakings.

The Commission may publish a rule as final, without being subject to the notice and comment requirements under the Administrative Procedure Act (''APA''), 5 U.S.C. 553, if the rule is interpretive, a general statement of policy, pertains to agency reorganization, or is a rule of practice and procedure. *See* 5 U.S.C. 553(b)(A); *see also Bachow Communications, Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (''Like the rules governing the filing of applications, rules permitting (or suspending) amendments are 'rules of agency organization, procedure, or practice' exempt from the Administrative Procedure Act's notice and comment requirement.'') The DC Circuit has held that the ''critical feature'' when determining whether a rule is procedural in nature is that ''it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *James Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277, 280 (DC Cir. 2000) (citing *JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (DC Cir. 1994)).

The Commission publishes this rule as final, implementing the voluntary electronic filing of Form FMC–18 under 5 U.S.C. 553 (b)(A), because this change is solely procedural in nature. Applicants will have the option to file electronically or to continue utilizing the paper format. If the Commission later determines that electronic filing be made a requirement of all applicants, a notice and comment period would be provided as required under 5 U.S.C. 553.

In order to promote the use of the electronic filing option by the public and to facilitate transfer of OTI records from a paper-based format to a more convenient and accessible digital format, the Commission also has decided to assess a lesser filing fee for those using the optional electronic filing method during this initial testing period. A filing fee of $250 will apply to new applicants for OTI licensing, and $125 for existing licensees who might wish to use the optional electronic filing system to update their licensing records or to submit changes in the licensee's organization for which prior Commission approval is required. *See* 46 CFR 515.18. Those using the electronic filing method also will directly assist BCL in its transition to an electronic recordkeeping system, by reducing the need for Commission staff to manually re-key data now residing primarily in paper format.

This rule is not a significant regulatory action as defined by Executive Order 12866, Regulatory Planning and Review, 58 FR 51,735 (Sept. 30, 1993) and therefore, is not subject to review by the Office of Information and Regulatory Affairs, in the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. These changes establish an optional provision for U.S. licensed OTIs and applicants for OTI licensing, which may be used at their discretion. While these businesses qualify as small entities under the guidelines of the Small Business Administration, the rule poses no economic detriment, but rather provides a more cost-effective alternative than would otherwise be available to assist U.S. OTIs in obtaining licenses or in notifying the Commission of changes in the licensee's business structure or operations.

The rule contains no additional information collection or recordkeeping requirement. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* do not apply.

List of Subjects for 46 CFR Part 515

Classified information, Freedom of Information, Privacy, Sunshine Act.

■ For the reasons set out above, the Commission amends 46 CFR part 515 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for 46 CFR part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

§ 515.12 [Amended]

■ 2. Amend 46 CFR 515.12 to add a new paragraph (e) as follows:

* * * * *

(e) *Optional method of filing Form FMC–18.* In lieu of completing and filing Form FMC–18 in paper format, applications and amendments thereto may be completed and submitted to the Bureau of Certification and Licensing by using the automated FMC–18 filing system in accordance with the instructions found on the Commission's home page, *http://www.fmc.gov.* A $250 fee for filing a new application and a $125 fee for filing an amended application will be assessed for filers using the automated FMC–18 filing system instead of the fees listed at § 515.5(b)(1), (2).

§ 515.18 [Amended]

■ 3. Amend 46 CFR 515.18 to add a new paragraph (f) as follows:

* * * * *

(f) *Optional method of filing Form FMC–18.* In lieu of completing and filing Form FMC–18 in paper format, applications for approval of changes in organization, transfer of license, or changes in the identity or status of the designated qualifying individual required under this section may be completed and submitted to the Bureau of Certification and Licensing by using the automated FMC–18 filing system in accordance with the instructions found on the Commission's home page, *http://www.fmc.gov.* A $250 fee for filing a new application and a $125 fee for filing an amended application will be assessed for filers using the automated FMC–18 filing system instead of the fees listed at § 515.5(b)(1), (2).

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–15593 Filed 8–9–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[EB Docket No. 06–119; WC Docket No. 06–63; FCC 07–139]

Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: In the *Order*, the Federal Communications Commission (Commission) extends the effective date of the recently adopted section 12.2 of the Commission's rules to October 9, 2007.

DATES: The effective date of the recently adopted rule 47 CFR 12.2, published at 72 FR 37655, August 10, 2007 is delayed until October, 9, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Deputy Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418–2792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in EB Docket No. 06–119 and WC Docket No. 06–63, FCC 07–139, adopted and released on August 2, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order

1. In the *Order*, we extend the effective date of the recently adopted section 12.2 of the Commission's rules to October 9, 2007. This rule requires local exchange carriers (LECs), including incumbent LECS and competitive LECs, and commercial mobile radio service (CMRS) providers to have ''an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals.'' The rule further states that ''LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that are normally powered from local AC commercial power.'' LECs that meet the definition of a Class B company as set forth in section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule. Absent an extension, this rule would become effective on August 10, 2007, which is 30 days after publication of the *Katrina Panel Order* in the **Federal Register**.

2. On July 31, 2007, CTIA—the Wireless Association® (CTIA) filed a ''Motion for Administrative Stay'' of section 12.2 of the Commission's rules. In particular, CTIA requests an administrative stay, pending further review, of the requirement that CMRS providers have an emergency back-up power source for all assets that are normally powered by local AC commercial power, including a minimum of eight hours of back-up power for cell sites, by August 10, 2007.

3. On the Commission's own motion, the Commission hereby delays the effective date of the back-up power rule adopted in the *Katrina Panel Order* for a period of 60 days from the original effective date of the rule (i.e., the new effective date will be October 9, 2007). This will provide the Commission with additional time to consider the issues raised by CTIA in its Motion for Administrative Stay and to hear from other concerned parties on those issues.

4. Accordingly, *it is ordered*, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 CFR 154(i) and (j), and sections 1.108 and 1.427 of the Commission's rules, 47 CFR 1.108 and 1.427, that the effective date of section 12.2 of the Commission's rules, 47 CFR 12.2, is delayed for a period of 60 days.

The new effective date of this rule will be October 9, 2007.

5. *It is further ordered* that the effective date of the *Order* is the date upon which the *Order* is released by the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15702 Filed 8–9–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070709299–7300–01]

RIN 0648–AV75

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Haddock Size Limit Change

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

ACTION: Temporary rule; emergency final rule.

SUMMARY: NMFS implements this final rule pursuant to its authority to issue emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency action implements measures intended to reduce immediately discards of Georges Bank (GB) and Gulf of Maine (GOM) haddock to prevent excessive waste and comply with the goals of reducing discards and maintaining the rebuilding programs of the Northeast (NE) Multispecies Fishery Management Plan (FMP), while helping to achieve optimum yield at the same time. Specifically, this emergency action reduces the commercial minimum haddock size to 18 inches (45 cm) from the current minimum size of 19 inches (48.3 cm). This action is intended to reduce discarding and maintain consistency with the FMP and the Magnuson-Stevens Act.

DATES: Effective August 10, 2007, through February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas A. Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, intended to immediately reduce excessive discarding of GB and GOM haddock by lowering the commercial minimum fish size to 18 inches (45 cm), from the current minimum size of 19 inches (48.3 cm). The New England Fishery Management Council (Council) voted on June 21, 2007, to recommend that the Secretary of Commerce take action to lower the minimum size of haddock to 17 inches (43.2 cm) for vessels fishing on GB. A written request from the Council to NMFS for such action was dated June 25, 2007. Recent information from the Council and data from observed trips to the Eastern U.S./Canada Area indicate that there have been large amounts of discarding of haddock occurring because only a small fraction of the haddock from an exceptionally large year class being caught on GB has reached the minimum size of 19 inches (48.3 cm). Observer data show a discard-to-kept ratio of over 1 lb (0.45 kg) of haddock discarded to every pound of haddock landed. Cumulative haddock discards from the Eastern U.S./Canada Area from May 1, 2007, through July 4, 2007, are estimated at approximately 700,000 lb (318 mt).

The reason for these large amounts of discards is that the very large 2003 year class of haddock, which is the largest since 1963, is growing more slowly than previously anticipated. Recent survey data indicate an average GB haddock size of 16.6 inches (42.2 cm) for fish in the 2003 year class. The average size of the fish in the 2003 year class is anticipated to be 19 inches (48.3 cm) by the summer of 2008, which would make them legal to retain under the existing regulations, so the current discard situation will resolve itself over the long term. However, in the short term, in order to reduce the large amount of discards and associated discard mortality that has been occurring in the haddock fishery, and enable such fish to be landed, a reduction in the haddock minimum size to18 inches (45.7 cm) is warranted. A temporary 18–inch (45–cm) minimum size limit will enable a larger fraction of the haddock catch to be landed, until a greater portion of the haddock population grows and reaches 19 inches (48.3 cm). NMFS is taking emergency action to effect this change.

This emergency action differs from the Council's request in two aspects. The Council recommended a minimum size of 17 inches (43.2 cm), and limited the scope of the size reduction to GB. This emergency action reduces the minimum size to 18 inches (45.7 cm) in both the GB and GOM stock areas. Although the discarding situation is principally occurring on GB, and GOM haddock appear to have a higher rate of growth than GB haddock (Northeast Fisheries Science Center, (NEFSC)), this action decreases the minimum size limit for haddock throughout the range of the species to ensure meaningful and effective enforcement of the minimum size. Having differential size limits in the commercial fishery for two stocks of haddock that are landed by the same fishery in the same ports would make it virtually impossible to distinguish between the different size limits for enforcement purposes. Reducing the haddock minimum size from 19 inches (48.3 cm) to 18 inches (45 cm) will more than double the percentage of the GB haddock population available for harvest (from 22 percent to 47 percent in fall 2007; NEFSC). Such a size reduction will also modestly increase the percentage of GOM haddock available (from 57 percent to 61 percent in fall 2007), commensurate with the higher growth rate of haddock in the GOM. The decrease in the size limit for GOM haddock, therefore, should not increase the incentive to target smaller haddock. The recreational minimum size will remain at 19 inches (48.3 cm) because the magnitude of the recreational fishery for GB haddock, and the associated discard issue, is much less than the commercial fishery. Also, it is possible for a recreationally caught haddock that is undersized to be released alive, while it is more difficult to do so with commercially caught fish. Because the recreational fishery is distinct from the commercial fishery, the fact that the associated minimum sizes are different does not undermine enforcement of such restrictions.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss or to preserve a

significant economic opportunity that otherwise might be foregone.

Although the relative size of the 2003 year class has been evident since 2004, neither the observed slow growth rate of the year class, nor the large magnitude of the discarding problem were anticipated. These issues have become apparent only recently. Because of the limited selectivity of trawl mesh, it is not possible to effectively target 19–inch (48.3–cm) haddock without catching 18–inch (45–cm) haddock. This limited selectivity, combined with the abnormally slow growth rate of the large 2003 year class, results in the trawl fishery temporarily experiencing an exceptionally high catch of undersized haddock. The inability of fishers to retain the extremely large numbers of haddock less than 19 inches (48.3 cm) being caught presents an immediate management problem. High levels of discards undermine the benefits of rebuilding this stock, and reduce the likelihood of attaining optimum yield because most discarded fish die and therefore never recruit into the fishery. As previously stated, recent observer data show a discard-to-kept ratio of over 1 lb (0.45 kg) of haddock discarded to every pound of haddock landed. That means the fishery is discarding more haddock than it is keeping. Cumulative haddock discards from the Eastern U.S./Canada Area from May 1, 2007, through July 4, 2007, are estimated at approximately 700,000 lb (318 mt). In the context of historic discards, the amount of haddock discarded in the first 2 months of fishing year (FY) 2007 is greater than the amount of haddock discarded during the entirety of FY 2006, FY 2005, or FY 2004. Reducing the haddock minimum size to 18 inches (45 cm) will reduce waste (discard mortality) in the fishery and may increase opportunities for the fishery to achieve optimum yield (OY). A collateral benefit of this action will be prevention of a significant direct economic loss by allowing the landing and sale of fish that would be discarded at sea if the minimum size limit were kept at 19 inches (48.3 cm). To delay this action for the time necessary to implement an amendment or framework action, with the opportunity for prior public comment, would result in continued discarding of large amounts of bycatch, the associated mortality of such discarding, the irretrievable loss of significant economic revenues from the discarded fish, and the further diminishing of the industry's ability to achieve OY. These consequences are inconsistent with National Standards 1, 7, and 9.

The immediate benefits to be gained through the reduction of the haddock minimum size limit (e.g., reduced discarding and enhanced opportunities to achieve OY) justify this emergency action in accord with the guidelines outlined.

This action is not expected to interfere with any conservation objective of the FMP. Although GB haddock is still considered overfished, overfishing is not occurring. In recent years, less than 50 percent of the annual target Total Allowable Catch for GB haddock has been harvested. Allowing fish to be landed that would otherwise be discarded dead is not expected to increase fishing mortality or delay the rebuilding of the GB haddock stock. An increase in fishing effort is not expected due to the fact that, at current levels of fishing effort, trips under an 18–inch (45–cm) minimum haddock size may be more profitable, because the same amount of fishing effort will yield more legal catch that can be landed and sold. A shift to target smaller fish is not likely because haddock in the 18 to19–inch (45 to 48.3–cm) range are caught together, and there is limited selectivity of the fishing gear. Therefore, there appears to be, in the short term, no incentive or effective way to target 18–inch (45–cm) haddock. NMFS intends to monitor this fishery closely in order to determine whether this action results in significant changes in fishing behavior or substantive increases in fishing effort. If necessary, inseason implementation of management measures through existing Regional Administrator authority could be taken to control catch. Prior to the expiration of this temporary rule, NMFS will evaluate whether an emergency situation still exists, and whether extension or modification of this action is necessary. The NEFSC estimates that the average total length of GB haddock will not be above 19 inches (48.3 cm) until the summer of 2008.

Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson-StevensAct and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide additional notice and opportunity for the public to comment, or to delay for 30 days the effective date of this emergency regulation, under the provisions of sections 553(b) and (d) of the Administrative Procedure Act. As more fully explained above, solicitation of public comment or a delay in effectiveness would result in significant negative consequences inconsistent with Magnuson-Stevens Act and FMP mandates. In particular, the immediate implementation of this action will avoid wasteful discards of haddock, enhance opportunities to achieve OY, reduce costs, and increase revenues of the fishing industry, without jeopardizing any conservation and management objectives of the FMP. Further, waiver of prior public comment is necessary because a substantial portion of the fishing effort in the groundfish fishery occurs in summer and early fall, and to delay implementation of this action would mean that the change in minimum size would occur after the part of the fishing season when it is needed most.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

This emergency action meets the Categorical Exclusion requirements of NOAA Administrative Order 216–6, and therefore no analysis was prepared pursuant to the National Environmental Policy Act.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 6, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.60, the introductory text to paragraph (a)(5)(ii) is suspended, and paragraph (a)(5)(iii) is added to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(5) * * *

(iii) *NE multispecies possession limits and yellowtail flounder TAC.* Subject to the seasonal restriction established under the Sea Scallop Area Access

Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), and provided the vessel has been issued a scallop multispecies possession limit permit as specified in § 648.4(a)(1)(ii), after declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453. 6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(3), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(iii)(A) through (C) of this section.

* * * * *

■ 3. In § 648.83, paragraph (a)(1) is suspended and paragraph (a)(3) is added to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (Inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

■ 4. In § 648.85, the introductory text to paragraph (c) is suspended, and paragraph (c)(4) is added to read as follows:

§ 648.85 Special management programs.

* * * * *

(c) * * *

(4) *Scallop fishery closed area access program.* Limited access scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(iii).

* * * * *

■ 5. In § 648.88, paragraph (c) is suspended and paragraph (e) is added to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(e) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under (a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(iii).

[FR Doc. E7–15693 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 154
Friday, August 10, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1605, 1631, 1651, 1655 and 1690

Employee Contribution Election and Contribution Allocations; Correction of Administrative Errors; Availability of Records; Death Benefits; Loan Program; Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rules with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations to reflect the requirements stated in the Treasury Regulations interpreting I.R.C. 401(a)(31) to provide additional means to verify that an amount is eligible for rollover to the TSP.

The Agency proposes to amend its regulations to clarify that the procedures applicable to an employee who was misclassified as either CSRS or FERS also apply to an employee who elects retroactive non-appropriated fund (NAF) retirement coverage.

The Agency proposes to add a rule regarding the production and authentication of records. The Agency would authenticate records in a manner consistent with Federal law and regulations.

The Agency proposes to amend its death benefit payment regulations in order to allow a non-spouse beneficiary to transfer a death benefit payment to an inherited IRA as authorized by the Pension Protection Act.

The Agency proposes to amend its loan regulations to reflect the changes brought by the Bankruptcy Abuse and Consumer Protection Act of 2005. Specifically, the amendments would reflect that a bankruptcy court now lacks jurisdiction over a TSP loan.

The Agency proposes to amend its regulations to clarify its power of attorney regulations by eliminating examples of general and special powers of attorney, some of which would no longer be acceptable to the Agency, and directing participants to a sample form at *http://www.tsp.gov.*

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Megan Graziano on (202) 942–1644.

SUPPLEMENTARY INFORMATION: The Agency administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Employee Contribution Election and Contribution Allocations

The Agency proposes to amend its regulations regarding eligible rollover distributions to the TSP. In particular, since Treasury regulations only require that the Agency receive sufficient evidence to reasonably conclude that a contribution is a valid rollover contribution, the Agency no longer requires a plan administrator or trustee to certify such distributions.

Further, when a participant completes a rollover, IRS rules require that the rollover be completed within 60 days of the date the participant received the distribution. Therefore, Agency practice is to have the participant certify the date the distribution was received. Agency regulations, however, require the financial institution to certify the date of the distribution. This date is irrelevant to a rollover that is completed by a participant.

In addition, the Agency can conduct additional verification in the event that the date certified varies significantly from the date on the check. Therefore, the Agency proposes to amend its regulations to delete the requirement that a financial institution certify the date of distribution.

Correction of Administrative Errors

The Agency proposes to amend its regulations to clarify that the procedures applicable to a participant misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, also apply to an employee who elects retroactive NAF coverage. These procedures will ensure that the employee either is refunded all contributions made by the employee or maintains ownership of all contributions that the TSP's record keeping system is unable to refund to the employee and that will continue to inure to the employee's benefit. The agency contributions that forfeit to the TSP will benefit all TSP participants because they will be used to offset the TSP's administrative expenses.

Availability of Records

The Agency proposes to add a section to its regulations regarding production and disclosure of records, and specifically, in relation to certification and authentication of records. The Agency frequently receives subpoenas directing it to authenticate Agency documents for use in state court proceedings. Often, these subpoenas request that such documents be authenticated in accordance with state court procedures and receive notarization. The Agency lacks the expertise to comply with the procedures of the individual 50 states and attempting to do so would result in a misallocation of TSP resources. Furthermore, it is not necessary for the Agency to comply with state court procedures in order for Agency documents to be admissible in a state court proceeding.

Section 1733(b) of title 28, United States Code, provides that ''[p]roperly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.'' In order to properly authenticate Agency documents, the records custodian or other qualified individual shall attach a written declaration that complies with current Federal Rules of Evidence. Documents so authenticated shall be admitted in evidence equally with the originals thereof. See 28 U.S.C. 1733(b).

Therefore, this regulation prescribes procedures for the Agency to authenticate documents so that the documents will be admissible in all state court proceedings. These procedures shall be the exclusive means of authenticating Agency documents.

Death Benefits

The Agency proposes to amend its regulations to reflect changes in its death benefit payment process brought by the Pension Protection Act (PPA) of 2006. The PPA allows non-spouse beneficiaries to transfer all or part of their benefits payable from a qualified retirement plan or government plan to an inherited IRA. As a result, the Agency proposes to amend its regulations to allow a non-spouse beneficiary to transfer all or part of his or her death benefit payment from the TSP to an inherited IRA.

Loan Program

The Agency proposes to amend its regulations to reflect changes in bankruptcy law. Due to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109–8), a bankruptcy court lacks jurisdiction over a TSP loan under both chapter 7 and chapter 13 procedures. To reflect this change, language mentioning the possibility of a bankruptcy court stopping TSP loan payments under a chapter 13 bankruptcy procedure would be removed.

Thrift Savings Plan

The Agency proposes to amend its regulations to simplify the regulations' description of acceptable general and special powers of attorney. By eliminating the noncomprehensive list of examples provided in the regulations, the agency hopes participants will use the regulations' thorough definitions as well as overview material and sample forms provided at *http://www.tsp.gov* to secure a proper power of attorney.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects

5 CFR Parts 1600, 1690

Government employees, Pensions, Retirement.

5 CFR Parts 1605, 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1631

Courts, Freedom of information, Government employees.

5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

Thomas K. Emswiler,

General Counsel, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION

1. The authority citation for part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Amend § 1600.32 by removing the second sentence of paragraph (a) and adding two sentences in its place, and revising paragraph (b)(2) to read as follows:

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

* * * * *

(a) * * * The administrator or trustee must either complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible retirement plan, a check indicating that the contribution is a direct rollover or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(b) * * *

(2) The administrator or trustee must either complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible retirement plan, a check indicating that the contribution is a direct rollover or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

* * * * *

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

3. The authority citation for part 1605 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5)(5) and (c)(1). Subpart B also issued under section 1043(b) of Pub. Law 104–106, 110 Stat. 186 and sec. 7202(m)(2) of Pub. Law 101–508, 104 Stat. 1388.

4. Section 1605.14 is amended by revising the third sentence of paragraph (a)(1), revising paragraph (c)(2) and adding paragraph (e) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

(a) * * *

(1) * * * If the participant requests a refund of employee contributions, the employing agency must submit a negative adjustment record to remove these funds under the procedure described in § 1605.12.

(c) * * *

(2) Employer contributions in the account are subject to the rules in paragraph (a)(2) of this section.

* * * * *

(e) The provisions of paragraph (c) of this section shall apply to any TSP contributions relating to a period for which an employee elects retroactive

Nonappropriated Fund retirement coverage.

PART 1631—AVAILABILITY OF RECORDS

5. The authority citation for part 1631 continues to read as follows:

Authority: 5 U.S.C. 552.

6. Add § 1631.34 to read as follows:

§ 1631.34 Certification and authentication of records.

(a) Upon request, the records custodian or other qualified individual shall authenticate copies of books, records, papers, writings, and documents by attaching a written declaration that complies with current Federal Rules of Evidence. No seal or notarization shall be required. Copies of any books, records, papers, or other documents in the Federal Retirement Thrift Investment Board shall be admitted in evidence equally with the originals thereof when authenticated in this manner.

(b) Fees for copying and certification are set forth in 5 CFR 1630.16.

PART 1651—DEATH BENEFITS

7. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

8. In § 1651.14, redesignate paragraphs (g) and (h) as paragraphs (h) and (i), and add new paragraph (g) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(g) *Payment to inherited IRA on behalf of a non-spouse beneficiary.* If payment is to an inherited IRA on behalf of a non-spouse beneficiary, the check will be made payable to the account. Information pertaining to the inherited IRA must be submitted by the IRA trustee.

* * * * *

PART 1655—LOAN PROGRAM

9. The authority citation for part 1655 continues to read as follows:

Authority: 5 U.S.C. 8433(g), 8439(a)(3) and 8474.

§ 1655.14 [Amended]

10. In § 1655.14, the third sentence of paragraph (a) is removed.

§ 1655.15 [Amended]

11. In § 1655.15 ''or'' is added to the end of paragraph (a)(5), a period replaces the semicolon at the end of paragraph (a)(6), ''or'' is removed from the end of paragraph (a)(6), and paragraph (a)(7) is removed.

PART 1690—THRIFT SAVINGS PLANS

12. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

13. Amend § 1690.12 by revising the second sentence in paragraph (b) and the third sentence in paragraph (c) to read as follows:

§ 1690.12 Power of attorney.

* * * * *

(b) * * * Additional information regarding general powers of attorney can be accessed at *http://www.tsp.gov.*

(c) * * * Additional information regarding special powers of attorney, as well as a sample form, can be accessed at *http://www.tsp.gov.*

[FR Doc. E7–15635 Filed 8–9–07; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket Nos. AO–322–A4; AMS–2006–0079; FV06–959–1]

Onions Grown in South Texas; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement No. 143 and Order No. 959

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amending the marketing agreement and order (order) for onions grown in South Texas, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the South Texas Onion Committee (committee), which is responsible for local administration of the order. The amendments include: Adding authority to the order to establish supplemental assessment rates on specified containers of onions; authorizing interest and late payment charges on assessments not paid within a prescribed time period; and authorizing the committee to engage in marketing promotion and paid advertising activities. Two additional amendments were proposed by the Department of Agriculture (USDA): Requiring that a continuance referendum be conducted every six years to determine grower support for the order; and, limiting the number of consecutive terms of office a member can serve on the committee. The proposed amendments are intended to improve the operation and functioning of the South Texas onion marketing order program.

DATES: The referendum will be conducted from September 10 through September 28, 2007. The representative period for the purpose of the referendum is August 1, 2006 through July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 2202 Monterey Street, #102–B, Fresno, CA 93721; telephone: (559) 487–5110, Fax: (559) 487–5906, E-mail: *Martin.Engeler@usda.gov;* or Kathleen M. Finn, 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, E-mail: *Kathy.Finn@usda.gov.*

Small businesses may request information on this proceeding 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, E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include a Notice of Hearing issued on May 23, 2006, and published in the May 30, 2006, issue of the **Federal Register** (71 FR 30629), and a Recommended Decision issued on March 29, 2007 and published in the April 6, 2007 issue of the **Federal Register** (72 FR 17037).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments are based on the record of a public hearing held on June 15, 2006, in Mission, Texas. The hearing was held to consider the proposed amendment of Marketing Agreement No. 143 and Order No. 959 regulating the handling of onions grown in South Texas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et*

seq.), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The Notice of Hearing contained proposals submitted by the committee and by USDA.

Four proposed amendments to the order were initially submitted by the committee to USDA and were included in the Notice of Hearing. Proposal number four in the Notice of Hearing pertaining to container marking requirements was withdrawn at the hearing. The committee's remaining three proposed amendments to the order would: (1) Provide authority to establish supplemental assessment rates on specified containers of onions; (2) authorize interest and late payment charges on assessments not paid within a prescribed time period; and (3) add authority for marketing promotion, including paid advertising.

The USDA proposed two additional amendments that would: Require a continuance referendum to be conducted every six years to determine grower support for the order; and limit the number of consecutive years a member may serve on the committee. USDA also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 29, 2007, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 7, 2007. None were filed.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the 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 so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 growers of onions in the production area and approximately 38 handlers subject to regulation under the order. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $1.16 million and $1.12 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the $6,500,000 annual receipt threshold. Likewise, all of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

The committee is comprised of 10 growers and 7 handlers, representing both large and small entities. Committee meetings are open to the public. All members are able to participate in committee deliberations and each has an equal vote in committee decisions. When the committee met on October 28, 2004, and recommended the proposed amendments, all views expressed by the members and others in attendance were considered.

In addition, the hearing to receive evidence on the proposed changes was open to the public and all interested parties were invited and encouraged to participate and provide their views.

The proposed amendments are intended to provide the committee and industry with additional tools to aid in the marketing of South Texas onions, and to improve the operation and administration of the order. Record evidence indicates that the proposed changes are intended to benefit all onion producers and handlers under the order, regardless of size. Witnesses testified that the impact of any of the proposals, if implemented, would be proportionate to individual grower's and handler's size, and that both small and large entities would benefit.

The record shows that the proposal to include authority for supplemental rates of assessments on specified containers would not have a differential impact on small versus large growers and handlers. Any increased assessment costs would be based on the type and volume of containers shipped rather than the size of a grower or handler's operation. Any supplemental assessment rate would thus be applied proportionately to handlers.

Onions that are packed and sold in cartons receive a higher return than onions packed and sold in bags or sacks. There is no known relationship between small versus large growers and handlers and the types of containers in which they pack their product. If onions packed in the higher value cartons were assessed at a higher rate, the assessment burden on the industry would be more proportionate to the revenues generated by the sales of product in the different types of containers.

In absolute dollar terms, a handler packing and selling only carton onions would pay more in assessments than a handler packing and selling a comparable volume of bagged onions. However, witnesses testified that additional funds generated from the supplemental assessment rate on specified containers would be used to promote sales of the product packed and sold in those containers. Therefore, the benefits of promotion would more directly benefit those paying the supplemental assessment. As discussed later in this document, the benefits of such promotions would be expected to outweigh the additional costs. Assessment revenues generated from supplemental assessment rates on specified containers would not be used to subsidize the lower assessment revenues generated from sales of the lower value product, thereby ensuring equitability between handlers.

The proposed amendment to authorize the committee to charge interest and/or late payment fees on assessments not paid within a prescribed time period would not have a differential impact on small and large entities. According to the record, late fees and interest charges, if implemented, would be based on handlers' timeliness of payments, regardless of size. A hearing witness familiar with the assessment collection operations under the order stated that there is no relationship between a handler's performance with regard to

timely assessment payment and the size of the handler's business operation. Any increased costs would be borne only by those handlers that fail to pay their assessments in a timely manner. These potential costs would offset any potential advantage handlers could gain by not paying their assessments when due and would thus promote equity for all handlers. It would provide an incentive to pay on time. This proposed amendment is strictly a performance-based measure and would thus be applied based on handlers' performance with respect to their payment of assessments.

Adding authority for paid advertising to the order would not disproportionately impact small business if such authority is implemented. Paid advertising activities would provide another tool the committee could use to promote its product. Paid advertising activities would be funded from handler assessments, which, as previously mentioned, are proportional to the volume of product shipped and thus proportional to the handler's relative size. Likewise, funding of the activities would be proportional.

Promotional activities authorized under the order are generic in nature. Generic advertising and promotion attempts to influence consumer's preferences and perceptions about a product, and if successful, ultimately expands the demand for the product. Because generic promotion promotes a product category, it benefits all entities in the category, especially growers and handlers. As witnesses testified, specific benefits of promotion and advertising programs are difficult to quantify, and are especially difficult to estimate prior to engaging in the activities. However, if more product is ultimately sold, both large and small growers and handlers benefit.

The proposed amendment to limit the number of consecutive terms of office that committee members may serve would increase industry participation on the committee by allowing more persons the opportunity to serve as members of the committee. It would also provide for more diverse membership, provide the committee with new perspectives and ideas, and increase the number of individuals in the industry with committee experience. There would be no additional cost as a result of this amendment.

The proposal to require continuance referenda on a periodic basis to ascertain grower support for the order would allow growers to vote on whether to continue the operation of the program. This provides a means for those whom the order was intended to benefit with an opportunity to express their views regarding continuation of the marketing order. USDA would conduct the referenda, and thus USDA would bear the majority of any associated costs.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs would be outweighed by the benefits expected to accrue to the South Texas onion industry. In addition, any additional costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. The amendments are designed to improve the administration and operation of the order and to provide additional tools to assist in the marketing of South Texas onions.

Paperwork Reduction Act

Current information collection requirements for Part 959 are currently approved by the Office of Management and Budget (OMB) under OMB number 0581–0178, ''Vegetable and Specialty Crops.'' No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

As with other similar 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.

Civil Justice Reform

The amendments to Marketing Order 959 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Department 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the April 6, 2007, issue of the **Federal Register** are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Onions Grown in South Texas.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of onions grown in South Texas is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of onions in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2006, through July 31, 2007.

The agent of the Secretary to conduct such referendum is hereby designated to be Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956)

682–5942, or E-mail: *Belinda.Garza@usda.gov.*

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: August 2, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Onions Grown in South Texas [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Agreement No. 143 and Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of onions grown in the production area (designated counties in South Texas) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on March 29, 2007, and published in the **Federal Register** on April 6, 2007, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Section 959.23, paragraph (a) is revised to read as follows:

§ 959.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The terms shall be so determined that about one-half of the total committee membership shall terminate each year. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms may not serve as members for at least one year before becoming eligible to serve again. A person who has served less than six consecutive years on the committee may not be nominated to a new two-year term if his or her total consecutive years on the committee at the end of that new term would exceed six years. This limitation on the number of consecutive terms and years does not apply to service on the committee prior to the enactment of this provision and does not apply to alternates.

* * * * *

3. Revise paragraph (b) of § 959.42 to read as follows:

§ 959.42 Assessments.

* * * * *

(b) Based upon the recommendation of the committee or other available data, the Secretary shall fix a base rate of assessment that handlers shall pay on all onions handled during each fiscal period. Upon recommendation of the committee, the Secretary may also fix supplemental rates on specified containers, including premium containers, identified by the committee and used in the production area: Provided, That any such supplemental assessment funds shall be used, to the extent practicable, for projects and activities related to the product upon which such assessments are collected.

* * * * *

4. Add a new paragraph (e) to § 959.42 to read as follows:

§ 959.42 Assessments.

* * * * *

(e) If a handler does not pay assessments within the time prescribed by the committee, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the committee with approval of the Secretary.

5. Revise § 959.48 to read as follows:

§ 959.48 Research and development.

The committee, with approval of the Secretary, may establish or provide for the establishment of production research, marketing research, development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of onions. The expenses of such projects shall be paid from funds collected pursuant to § 959.42.

6. In § 959.84, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 959.84 Termination.

* * * * *

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

whether continuance is favored by producers. The Secretary would consider termination of this part if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of onions represented in the referendum favor continuance.

* * * * *

[FR Doc. E7–15391 Filed 8–9–07; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

RIN 3150–AI15

NRC Size Standards; Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the size standards it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act and making the same change to its annual fee rule. NRC proposes to increase the receipts-based small business size standard from $5 million to $6.5 million to conform to the standard set by the Small Business Administration (SBA). This size standard reflects the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard on January 23, 2002 (67 FR 3041) and on December 6, 2005 (70 FR 72577) to account for inflation.

DATES: The direct final rule will become effective on October 24, 2007, unless significant adverse comments on the amendment are received by September 10, 2007. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after September 10, 2007 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AI15) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Lesar, Chief, Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7163, e-mail *mtl@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rulemaking has the simple aim of updating NRC's size standards to reflect those of the SBA. Because the NRC believes that this action should not cause controversy, the NRC is using the direct final rule process for this rule. The amendment in this rule will become effective on October 24, 2007. However, if the NRC receives significant adverse comments on this direct final rule by September 10, 2007, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations,

Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing the following amendments to 10 CFR parts 2 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.810, paragraph (a)(1) is revised to read as follows:

§ 2.810 NRC Size Standards.

(a) * * *

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $6.5 million or less over its last 3 completed fiscal years; or

* * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSES BY THE NRC

3. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and Government agencies licensed by the NRC.

4. In § 171.16, paragraph (c) introductory text is revised to read as follows:

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $6.5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

* * * * *

Dated at Rockville, Maryland, this 27th day of July, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–15554 Filed 8–9–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EERE–2007–BT–STD–0007]

RIN 1904–AB70

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Public Meeting and Availability of the Framework Document for Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The Department of Energy (DOE or Department) is initiating the rulemaking process to adopt new energy conservation standards for small electric motors. Accordingly, the Department will hold an informal public meeting to discuss and receive comments on issues it will address in this rulemaking proceeding. The Department also encourages written comments on these subjects. To inform stakeholders and facilitate this process, DOE has prepared a Framework Document, which is available at: *http://www.eere.energy.gov/buildings/appliance_standards/*.

DATES: The Department will hold a public meeting on Thursday, September 13, 2007 from 9 a.m. to 5 p.m. at DOE headquarters in Washington, DC. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of statements to be given at the meeting before 4 p.m., Thursday, August 30, 2007. Written comments are welcome, especially following the public meeting, and should be submitted by Friday, September 28, 2007.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945, so that the necessary procedures can be completed.)

Stakeholders may submit comments, identified by docket number EERE–2007–BT–STD–0007 and/or Regulatory Identifier Number (RIN) 1904–AB70, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: small_electric_motors_std.rulemaking@ee.doe.gov.* Include docket number EERE–2007–BT–STD–0007 and/or RIN 1904–AB70 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Small Electric Motors, docket number EERE–2007–BT–STD–0007 and/or RIN 1904–AB70, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Antonio M. Bouza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–586–4563. E-mail: *Antonio.Bouza@ee.doe.gov*; Francine Pinto, Esq., or Eric Stas, Esq., U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act (EPCA) of 1975 (42 U.S.C. 6291–6309) established an energy conservation program for major household appliances. The National Energy Conservation Policy Act of 1978 (NECPA) amended EPCA to add Part C of Title III (42 U.S.C. 6311–6317), which established an energy conservation program for certain industrial equipment. The Energy Policy Act of 1992 (EPACT), Public Law 102–486, also amended EPCA, and included amendments that expanded Title III to include certain types of commercial equipment, including small electric motors. Specifically, EPACT amended section 346 of EPCA (42 U.S.C. 6317) to provide that the Secretary of Energy prescribe testing requirements and energy conservation standards for those small electric motors for which the Secretary determines that standards ''would be technologically feasible and economically justified, and would result in significant energy savings.'' (42 U.S.C. 6317(b)(1))

On July 10, 2006, the Secretary of Energy made a positive determination with respect to testing requirements and energy conservation standards for small electric motors. 71 FR 38799. As a result of DOE's determination analysis, the Secretary determined preliminarily that standards for small electric motors would be ''technologically feasible and economically justified, and would result in significant energy savings.'' DOE will determine whether and at what level to promulgate energy conservation standards for small electric motors based on in-depth consideration, with public participation, of the technical feasibility, economic justification, and energy savings of potential standards levels in the context of prescribing new or amended standards pursuant to section 325(o) and (p) of EPCA (42 U.S.C. 6295(o), (p)).

To begin the required rulemaking process, the Department prepared a Framework Document to present the issues and explain the analyses and process it anticipates using to set energy conservation standards for small electric motors. The focus of the public meeting will be to discuss the analyses and issues identified in various sections of the Framework Document. During the Department's presentation to

stakeholders, the Department will discuss each item listed in the Framework Document as an issue for comment. The Department will also make a brief presentation on the rulemaking process for these products. The Department encourages those who wish to participate in the public meeting to obtain the Framework Document and be prepared to discuss its contents. However, public meeting participants need not limit their discussions to the topics in the Framework Document. A copy of the draft Framework Document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/*. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products. The Department also welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by Friday, September 28, 2007, comments and information on the matters addressed in the Framework Document and on other matters relevant to consideration of standards for these small electric motors.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws. A court reporter will be present to prepare a transcript of the meeting.

After the public meeting and the expiration of the period for submission of written statements, the Department will begin conducting the analyses as discussed at the public meeting and reviewing the comments received.

Anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding small electric motors, should contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on August 3, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–15692 Filed 8–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2560

RIN 1210–AB23

Amendments to Civil Penalties Under ERISA Section 502(c)(7)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a companion to the Department of Labor/Employee Benefits Security Administration's (Department) direct final rule (published today in the ''Rules and Regulations'' section of the **Federal Register**) amending the Department's civil penalty regulation under section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) to reflect recent amendments to section 502(c)(7) by the Pension Protection Act of 2006. These amendments authorize the Secretary of Labor to assess civil penalties not to exceed $100 per day for each violation of section 101(m) of ERISA. Section 101(m) of ERISA requires plan administrators of individual account plans to notify participants and beneficiaries of their right to sell the company stock in their accounts and reinvest the proceeds into other investments available under the plan.

The Department is publishing these amendments as a direct final rule without prior proposal because the Department views them as highly technical and anticipates no significant adverse comment. The Department has explained its reasons in the preamble to the direct final rule. If the Department receives no significant adverse comment during the comment period, no further action on this proposed rule will be taken. However, if the Department receives significant adverse comment, the Department will withdraw the direct final rule and it will not take effect. In that case, the Department will address all public comments in a subsequent final rule based on this proposed rule. The Department will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *www.regulations.gov* (follow instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: 502(c)(7) Civil Penalty. Comments received will be posted without change, including any personal information provided, to *www.regulations.gov* and *http://www.dol.gov/ebsa*, and also available for public inspection at the Public Disclosure Room, Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: As noted above, in the ''Rules and Regulations'' section of today's **Federal Register**, the direct final rule being published makes technical changes to the Department's existing civil penalty regulation at 29 CFR 2560.502c–7 for violations of section 101(i) of ERISA, relating to blackout notices, in order to conform the regulation to section 502(c)(7) of ERISA, as amended by the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, for violations of section 101(m) of ERISA, relating to diversification rights. The provisions proposed here are those contained in the direct final rule. Please refer to the preamble and regulatory text of the direct final rule for further information and the actual text of the revisions. Additionally, all information regarding Statutory and Executive Orders for this proposed rule can be found in the Supplementary Information section of the direct final rule.

Signed at Washington, DC, this 3rd day of August, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–15568 Filed 8–9–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2006–0004]

RIN 0651–AC00

Examination of Patent Applications That Include Claims Containing Alternative Language

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice pertaining to any claim using alternative language to claim one or more species. The search and examination of such claims often consume a disproportionate amount of Office resources as compared to other types of claims, because determining the patentability of these claims often requires a separate examination of each of the alternatives within the claims. The Office expects that requiring applicants who choose to draft claims that read on multiple species using alternative language to maintain a certain degree of relatedness among the alternatives will enable the Office to do a more thorough and more reliable examination of such claims.

COMMENT DEADLINE DATE: To be ensured of consideration, written comments must be received on or before October 9, 2007. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *markush.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½-inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kathleen Kahler Fonda, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7754; by mail addressed to: Box Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda.

SUPPLEMENTARY INFORMATION:

I. *Background Information.* As part of its ongoing efforts to enhance patent quality and reduce pendency in accordance with the 21st Century Strategic Plan, the Office is proposing to revise its treatment of claims that recite alternatives, whether the claims use Markush or other forms of alternative language. While the origins of the Markush claim drafting technique lie in the chemical arts, claims that recite alternatives are now commonplace in all areas of technology. Applicants sometimes use Markush or other alternative formats to claim multiple inventions and/or to recite hundreds, if not thousands, of alternative embodiments of a single invention in one claim. Proper search of such complex claims, particularly those using Markush language, often consume a disproportionate amount of Office resources as compared to other types of claims. The prosecution of these complex claims likewise often requires separate examination and patentability determinations for each of the alternatives within the claim, *e.g.*, if the alternatives raise separate prior art, enablement, or utility issues. Furthermore, the variety and frequency of alternatives recited in claims filed in applications pending before the Office, driven in part by trends in emerging technologies, have exacerbated problems with pendency.

In addition to comments on the proposed rules, the Office welcomes further suggestions for changes that would improve the examination of claims that recite Markush or other alternative language while appropriately balancing the interests of the Office with those of applicants and the public. The Office expects that improving practices pertaining to claims that recite alternatives will enhance its ability to grant quality patents that effectively promote innovation in a timely manner.

A. *Brief History of Office Treatment of Claims that Recite Alternatives.* Claims that define species within the scope thereof by enumeration are now commonplace in all areas of technology. However, the Office had formerly deemed them unacceptable, apparently for failure to comply with the definiteness requirement of 35 U.S.C. 112. *See* Manuel C. Rosa, *Outline of Practice Relative to ''Markush'' Claims*, 34 J. Pat. Off. Soc'y 324, 324 (1952); *Manual of Patent Examining Procedure* (MPEP) section 706.03(d) (2nd Ed. 1953). In *Ex parte Markush*, 1925 Dec. Comm'r Pat. 126, 128 (1924), the Office officially sanctioned a claim drafting technique, already in use for some time, wherein the phrase ''selected from the group consisting of'' is followed by a closed listing of specific members of the group. Claims including such language became known as ''Markush claims.'' For example, if a claim to a chemical composition requires a particular alcohol, that alcohol could be defined via Markush language such as ''an alcohol selected from the group consisting of methanol, ethanol, and isopropanol;'' or ''an alcohol of the formula R-OH, wherein R is selected from the group consisting of CH_3-, CH_3CH_2-, and $(CH_3)_2CH$-.''

In addition to the indefiniteness issue, another factor giving rise to claims using Markush language was

> the change from claims based on the central type of definition to those based on the peripheral definition. With the peripheral-type claims came the necessity of avoiding invalidity by reason of inoperative species which might be included within the metes and bounds of the claim. In mechanical cases, this problem is overcome by the use of elements defined as ''means'' but chemical claims do not lend themselves well to such a solution due to the fact that equivalence in chemical cases is difficult to establish. The Markush claim may be regarded as a partial solution to this problem, since it permits an applicant to claim a subgeneric group containing those materials which have been actually tested and known by applicant to be operable.

Richard L. Kelly, *et al.*, *Markush Claims*, 37 J. Pat. Off. Soc'y 164, 171 (1955). Thus, Markush practice arose from a need to address problems presented in claiming chemical compounds when an applicant could only define his or her invention by setting forth at least one set of alternatives from which a selection must be made. Most of the court decisions concerning claims that recite

alternatives involve Markush practice and reflect problems associated with claiming compounds by their chemical structure.

The Office has long wrestled with problems associated with Markush claiming. As noted in a 1935 review article:

> [T]he extent to which the patent professional * * * made use of the Markush formula indicated that its application had gone far afield of the original intent. It was like a fire which had spread beyond control. It became the medium through which totally unrelated substances could be assembled under the guise of a genus. * * * If one member were found to be old or inoperative, that one was stricken from the group, and the diminished group reasserted with renewed vigor. In such a case the search required was for as many individual species as there were members recited in the group.

V.I. Richard, *Claims Under the Markush Formula*, 17 J. Pat. Off. Soc'y 179, 190 (1935).

By the 1950s, the Office generally viewed members of a proper Markush group as patentably indistinct from each other. *See* Manuel C. Rosa, U.S. Dep't of Commerce, *Training Manual for Patent Examiners: Outline of Practice Relative to ''Markush'' Claims* 11 (1958) (''These decisions uniformly hold that a reference for one of the members of the group is a reference for the entire group.'') (citing *In re Ayres*, 83 F.2d 297, 29 USPQ 424 (CCPA 1936); *Ex parte Ellis*, 18 J. Pat. Off. Soc'y 731 (1936) (abstract only); *Ex parte Rutherford*, 63 USPQ 102 (Bd. Pat. App. 1943); *Ex parte Watt*, 63 USPQ 163 (Bd. Pat. App. 1942); *Ex parte Schroy*, 26 J. Pat. Off. Soc'y 498 (1944) (abstract only)). In 1958, the Court of Customs and Patent Appeals (CCPA), predecessor of the current Court of Appeals for the Federal Circuit (Federal Circuit), explained that Markush claims ''were originally regarded as an exception to the previously acceptable claim terminology and were rigidly restricted to groups of substances belonging to some recognized class.'' *In re Ruff*, 256 F.2d 590, 598, 118 USPQ 340, 348 (CCPA 1958). However, Markush practice had been substantially liberalized in that ''the original rigid, emergency-engendered restrictions have been progressively relaxed through the years to the point where it is no longer possible to indulge in a presumption that the members of a Markush group are recognized by anyone to be equivalents except as they 'possess at least one property in common which is mainly responsible for their function in the claimed relationship.' '' *Ruff*, 256 F.2d at 599, 118 USPQ at 348 (quoting MPEP section 706.03(y) (2nd ed. 1953)). The *Ruff* court concluded that in view of such liberalization, the mere fact that components were claimed as members of a Markush group could not be relied upon to establish the equivalency of these components. However, the *Ruff* court acknowledged that an applicant's expressed recognition of an art-recognized or obvious equivalent could be used as evidence that such equivalency does exist. *See Ruff*, 256 F.2d at 595, 118 USPQ at 345.

After the *Ruff* decision, the Office tried several approaches to rein in administrative problems arising from Markush claims. These included rejecting claims on the following bases: 35 U.S.C. 112, ¶ 2; 35 U.S.C. 121 (accompanied by a restriction requirement and withdrawal of the claim); and a ''judicially created doctrine'' of improper Markush grouping. *See* Edward C.Walterscheid, *Markush Practice Revisited*, 61 J. Pat. Off. Soc'y 270, 271 (1979). However, the CCPA clearly enunciated its view that these statute-based rejections were improper. In *In re Wolfrum*, the court held that it is improper to reject a Markush claim under 35 U.S.C. 112, ¶ 2, merely because more than one independent and distinct invention is encompassed by the claim. 486 F.2d 588, 591, 179 USPQ 620, 622 (CCPA 1973). In a later case, the court explained that 35 U.S.C. 121 ''provides the Commissioner with the authority to promulgate rules designed to restrict an application to one of several claimed inventions when those inventions are found to be 'independent and distinct.' It does not, however, provide a basis for an examiner acting under the authority of the Commissioner to reject a particular claim on that same basis.'' *In re Weber*, 580 F.2d 455, 458, 198 USPQ 328, 331–32 (CCPA 1978) (emphases in original). Notably, although it determined that there was no statutory basis for rejecting a claim under 35 U.S.C. 121, the *Weber* court remanded the case to the Office for consideration of a doctrinally based ''improper Markush claim'' rejection. *See also In re Haas*, 486 F.2d 1053, 1054, 179 USPQ 623, 626 (CCPA 1973) (holding that following a restriction requirement, the withdrawal of a Markush claim from consideration not only in the application at issue but prospectively in any subsequent application on the basis of its content was effectively a rejection of that claim).

Shortly after *Weber* and *Haas*, the CCPA provided a detailed analysis of Markush practice in *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980). In that case, the Office rejected a claim drawn to coumarin compounds useful as dyes based on a judicially created doctrine, gleaned by the Office Board of Appeals (Board) from a number of cited CCPA decisions, as reciting an improper Markush group. According to the Board, both final product dyes and intermediate compounds from which they could be synthesized were within the scope of the claim, and the claim failed for misjoinder because some species within its scope were not ''functionally equivalent'' to others. The court reversed the Board's decision, explaining that it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter of the claim lacks ''unity of invention.'' In tracing the history of ''improper Markush'' rejections, the court observed:

> In the early years of the development of Markush practice, many of the cases involved the problem of clarity—avoiding the uncertainties of alternatives and the like. More recently, the cases have centered on problems of scope, which are related to enablement. Assuming enablement, however, there remains a body of Markush-practice law regarding Markush-type claims, particularly in the chemical field, concerned more with the concept of what might be better described as the concept of unity of invention. At least the term would be more descriptive and more intelligible internationally than is the more esoteric and provincial expression 'Markush practice.' It is with this unity of invention concept in mind that we approach the propriety of the appealed claims.

631 F.2d at 721, 206 USPQ at 305.

The *Harnisch* court then explained that the Office had a ''perfect right'' to rely on rules derived from case law ''to determine whether the claims before it were or were not in proper form to be examined for patentability.'' 631 F.2d at 720, 206 USPQ at 304. The *Harnisch* court further suggested that the Office consider exercising its rule making powers to forestall procedural problems arising from Markush claims. 631 F.2d at 722 n.6, 206 USPQ at n.6. While it is clear from *Harnisch* that the CCPA was not hostile to the concept of ''improper'' Markush claims, the Office has not received further guidance from its reviewing courts as to the propriety of a Markush rejection since *Harnisch.*

The struggle to balance the needs of inventors for coverage of the full scope of their inventions with those of the Office for search and examination responsibilities commensurate in scope with resources is a long-standing one. The Office ''must have some means for controlling such administrative matters as examiners' caseloads and the amount of searching done per filing fee.'' *Weber*, 580 F.2d at 458, 198 USPQ at 332. Controlling examiners' caseloads is a

much more significant concern in 2007 than it was in 1978. The volume and complexity of patent applications continue to outpace the examining corps' current capacity to examine them. The result is a pending—and growing—application backlog of historic proportions. Thus the Office does not believe that controlling the amount of searching per filing fee will, by itself, resolve the administrative issues raised by the use of Markush or alternative language.

For a more comprehensive review of the history of Markush claiming, *see* V.I. Richard, *Claims Under the Markush Formula*, 17 J. Pat. Off. Soc'y 179 (1935); Richard L. Kelly, et al., *Markush Claims*, 37 J. Pat. Off. Soc'y 164 (1955); Edward C. Walterscheid, *Markush Practice Revisited*, 61 J. Pat. Off. Soc'y 270 (1979); and *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980).

B. *Claims Reciting Alternatives.* Claims that use alternative language to define multiple species are often confusing and complex, and frequently border on being unmanageable. A single claim may continue for pages; even relatively short claims may encompass millions of species in the alternative. Claims that recite alternatives, especially in the chemical and biotechnological arts, often describe alternatives which themselves have multiple, nested points of variation or other complex variations, or set forth alternatives that lack either a shared utility or a common structure.

Markush formats and other forms of alternative language are generally used in two different contexts. First, a chemical compound or a portion thereof (either claimed as such, or as a component of a process or composition), may be defined using Markush language. In *Harnisch*, the court found that the claimed compounds, which were defined as members of a Markush group, had ''unity of invention'' because they shared a common function as dyes, and shared a substantial structural feature as coumarin compounds. 631 F.2d at 722, 206 USPQ at 305. Current Office practice, stemming from *Harnisch*, is that compounds that are defined by Markush language are directed to a single invention (*i.e.*, have ''unity of invention'') when they ''(1) share a common utility, and (2) share a substantial structural feature essential to that utility.'' *See* MPEP 803.02 (8th Ed., Rev. 5, Aug. 2006). Second, entire process steps or components of a claimed invention, rather than a single compound or portion(s) thereof, may be defined using alternative language. According to current Office policy, Markush format is acceptable when defining such process steps or components if all the members of the group possess at least one property in common which is mainly responsible for their function in the claimed relationship, and it is clear from their very nature or from the prior art that all of them possess this property. *See* MPEP 2173.05(h) (8th Ed., Rev. 5, Aug. 2006).

1. Example of Markush Format Alternative Language. Typical examples of apparently straightforward claims using the Markush format can be found in the PCT International Search and Preliminary Examination Guidelines (PCT Guidelines), Chapter 10 (available at *http://www.wipo.int/pct/en/texts/pdf/ispe.pdf*). Examples of such claims are set forth in paragraphs 10.38—10.45; paragraphs 10.52—10.59 therein address unity of invention issues specifically pertaining to biotechnological inventions.

Example 24 from the PCT Guidelines, reproduced below, is illustrative of an apparently straightforward claim which would actually be quite complex to search and examine.

10.44 Example 24

Claim 1: A pharmaceutical compound of the formula: A—B—C—D—E

Wherein:

A is selected from C_1–C_{10} alkyl or alkenyl or cycloalkyl, substituted or unsubstituted aryl or C_5–C_7 heterocycle having 1–3 heteroatoms selected from O and N;

B is selected from C_1–C_6 alkyl or alkenyl or alkynyl, amino, sulfoxy, C_3–C_8 ether or thioether;

C is selected from C_5–C_8 saturated or unsaturated heterocycle having 1–4 heteroatoms selected from O, S or N or is a substituted or unsubstituted phenyl;

D is selected from B or a C_4–C_8 carboxylic acid ester or amide; and

E is selected from substituted or unsubstituted phenyl, naphthyl, indolyl, pyridyl, or oxazolyl.

This claim reads on approximately 2.564×10^{23} possible species, there is no substantial feature shared by all species, and there is no indication that the species share a specific common utility. Claims in patent applications, especially those in the chemical and biotechnological arts, are often significantly more complex to search and examine than the apparently straightforward example above.

2. Examples of Other (Non-Markush) Alternative Language. Claims that recite alternatives usually define species that fall within the scope of a claim; however, such claims occasionally recite a list of species that are excluded from the scope of a claim. The most common forms of claims that set forth alternatives employ the phrase ''selected from the group consisting'' or the term ''or.'' Other claim limitations written in an alternative form that do not use these phrases include, for example, the following:

(1) ''A composition comprising any 10 molecules from Table 1'' (wherein Table 1 includes 1000 chemical formulas);

(2) ''A protein having SEQ ID NO: 1, wherein any polar residue may be substituted by a proline residue;'' or ''a protein having SEQ ID NO: 2'' (where a review of SEQ ID NO: 2 of the sequence listing shows that at certain positions, specific alternative variations are permitted); and

(3) ''A polypeptide consisting of a contiguous 10-mer fragment of SEQ ID NO: 3'' (where a review of the sequence listing shows that fully defined SEQ ID NO: 3 is 200 residues long, and thus the claim reads upon plural fragments in the alternative: residues 1–10, residues 2–11, residues 3–12, etc.).

3. Example of Alternative Language in Process Claims. Although the above examples are directed to product claims, process claims also may be drafted in alternative language format. A process claim could, for example, recite a list of alternative active steps or achieve a list of alternative effects. Thus, a process claim employing alternative language could require the same product to achieve different effects, or require different products to achieve the same effect. Furthermore, such a process claim could recite two features which vary. A simple example of such a claim is:

''A process of administering product A, B, or C to treat disease D, E, or F.'' Such a claim would read upon a matrix of nine species wherein the species do not all require either administering the same product or treating the same disease.

C. *Current Practice With Respect to Claims Reciting a Markush Group.* Current Office policy requires examination of all species of a claim that recites a Markush group when the alternatives are sufficiently few in number or so closely related that search and examination can be made without serious burden. *See* MPEP 803.02 (8th Ed., Rev. 5, Aug. 2006). Consistent with the *Harnisch* decision, the Office cannot refuse to examine what applicants regard as their invention unless the subject matter in a claim lacks unity of invention. As a result, even where the search and examination of a claim that has ''unity of invention'' would require serious burden, the examiner must determine the patentability of the claim. In such case, however, the examiner may require applicant to elect a single species under 37 CFR 1.146 for initial search and examination to facilitate examination on the merits. *If* the elected species is not allowable, examination of the Markush claim will be limited to the

elected species and any species not patentably distinct therefrom, and any separate claims to the elected species and any species not patentably distinct therefrom. *See* MPEP 803.02 (8th Ed., Rev. 5, Aug. 2006). Claims drawn to species patentably distinct from the elected species are held withdrawn from further consideration. If the elected species is allowable, then the search and examination of the Markush claim will be extended to non-elected species to the extent necessary to determine patentability of the claim. This may require a separate search and examination of each alternative claimed, *i.e.*, a separate patentability determination of each non-elected species.

The *Harnisch* court did not set forth a generally applicable test for the Office to follow in determining whether, in an application filed under 35 U.S.C. 111(a), alternatives within a claim have ''unity of invention,'' nor did it suggest a specific mechanism by which the Office could refuse to examine a claim that lacks ''unity of invention.'' The procedure described in the paragraph above applies when the alternatives within a claim have ''unity of invention.'' However, to date, the Office has not established official procedures for examiners to follow when examining a claim that recites alternatives wherein the alternatives lack ''unity of invention'' or for restricting an application to one invention where multiple independent and distinct inventions are recited as alternatives in a single claim. The Office is proposing to revise the rules of practice to provide such procedures.

D. *Proposed Treatment of Claims that Recite Alternatives.* In a separate rule making, the Office proposed to revise the rules of practice relating to the examination of claims in patent applications to focus its initial examination on a limited number of claims. *See Changes to Practice for the Examination of Claims in Patent Applications*, 71 FR 61 (Jan. 3, 2006), 1302 *Off. Gaz. Patent Office* 1329 (Jan. 24, 2006) (proposed rule). Applicants should not be permitted to circumvent the proposed claims rules by presenting a single claim that sets forth multiple independent and distinct inventions in the alternative. Although comments were requested regarding how claims that read on multiple species using alternative language should be counted for purposes of proposed 37 CFR 1.75(b)(1), the Office did not propose a specific rule change to address the issue. Furthermore, the comments received from the public did not address the issue of how to treat a single claim that encompasses more than one independent and distinct invention.

Regardless of whether the proposed rules pertaining to the number of claims are promulgated, the Office needs to address the challenges created by claims that employ alternative language, particularly Markush language, for the reasons discussed above. As noted above, applicants in all areas of technology have been filing increasing numbers of claims that employ alternative language; the complexity and variety of the format of those claims are also on the rise. To enable the Office to do a better, more thorough and reliable examination of such claims, the Office is proposing rules to limit each claim to a single invention and to define acceptable formats for claims that set forth alternatives. These proposed rules are not intended to change current restriction practice with regard to multiple independent and distinct inventions claimed in separate claims of an application. Rather, they are intended to provide a mechanism by which the Office can require a single claim to be limited to a single invention.

1. *Each claim must be limited to a single invention.* A claim that is directed to multiple independent and distinct inventions would meet the statutory eligibility requirement for restriction set forth in 35 U.S.C. 121:

> If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. * * *

35 U.S.C. 121.

Through the use of the word ''may,'' the statute is permissive, not mandatory, and gives the Director discretion to require restriction. Thus, the Office proposes that if a single claim defines multiple independent and distinct inventions, the examiner may apply a restriction requirement before examination. In determining whether a claim is limited to a single invention, the claim as a whole must be considered; the discrete components of the claim are not to be analyzed in isolation. *See*, *e.g.*, *Diamond* v. *Diehr*, 450 U.S. 175, 188–89, 209 USPQ 1, 9 (1981); *W.L. Gore & Assoc., Inc.* v. *Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983).

As a general principle, a claim that encompasses more than one species, but does not list alternatives, defines one generic invention. If such a claim were restricted, the generic invention might never be examined as a whole if the claim were divided into parts. *Weber*, 580 F.2d at 458, 198 USPQ at 330 (''The totality of the resulting fragmentary claims would not necessarily be the equivalent of the original claim.''). Although dividing one generic claim by restriction may not be appropriate under *Weber*, making a requirement for an election of species for initial search and examination purposes would be permissible under § 1.146. This procedure provides a practical way to examine a large genus:

> Restriction of the members which applicants are permitted to combine in the Markush group evolved from the administrative principle promulgated by the Patent Office that only a single invention can be claimed in a single application. The reason for such a rule is based upon the very real necessity of avoiding multiple searches for a single fee. Consequently, the problem of proper grouping is simply one of administration, and restriction of members which properly may be combined in a Markush group is solely based on the premise that only one invention may be claimed in any one application.

Kelly, 37 J. Pat. Off. Soc'y at 171–172. *See also* the Office commentary quoted by the court in *In re Feight*, 181 F.2d 206, 209, 85 USPQ 274, 277 (CCPA 1950):

> The appellant's position, therefore, amounts to this: that an applicant may include claims to a number of independent inventions in a single application and, by also including one or more claims, however improper, which recite all of these inventions, may compel the Patent Office to act upon the merits of all his claims. The mere statement of this proposition seems sufficient to show its unsoundness since, if accepted, it would be possible for an applicant to obtain an examination of an unlimited number of independent inventions for a single fee, by including in his application a claim which catalogued all of them.

If any portion of a claim requires selection from a list of alternatives, then the claim as a whole should be treated as a claim that reads on multiple species using alternative language, and would be subject to the provisions of proposed §§ 1.75(j) and 1.140. For example, the following claims define the same subject matter:

1. A composition comprising component 1 selected from the group consisting of A, B, and C and component 2 selected from the group consisting of D, E, and F.

2. A composition comprising AD, AE, AF, BD, BE, BF, CD, CE, or CF.

In the above example, AD, AE, AF, etc., each represent individual alternative species. Determining whether the claimed subject matter is limited to a single invention does not depend on there being a community of properties among the variable members of the Markush expressions themselves (A, B, C, etc.), but rather depends on

whether the individual species (AD, AE, AF, etc.) within the scope of the claim define a single invention. This is not always a straightforward task, especially when claims employ complex alternative language.

In the 1950s, as a general rule, members of a proper Markush group were not considered to be patentably distinct from each other. *Training Manual for Patent Examiners: Outline of Practice Relative to ''Markush'' Claims* at 11. That practice ended when the court in *Ruff*, quoting MPEP 706.03(y) (2nd ed. 1953), indicated that Markush practice had been liberalized to such an extent that the mere fact that components were claimed as members of a Markush group could not be relied upon to establish the equivalency of these components. 256 F.2d at 599, 118 USPQ at 348. However, the court also observed that an applicant's expressed recognition of an art-recognized or obvious equivalent may be used as evidence that such equivalency does exist. 256 F.2d at 595, 118 USPQ at 345. Similarly, in a later case, the Commissioner of Patents determined that if there is an express admission that claimed species would have been obvious over each other within the meaning of 35 U.S.C. 103, an examiner should not require restriction. *See In re Lee*, 199 USPQ 108, 109 (Comm'r Pat. 1978).

In addition to proposing a requirement limiting a claim to a single invention, the Office is proposing to specify that when subject matter that reads on multiple species is defined in a single claim using alternative language, the claim is limited to a single invention when at least one of the following two conditions is met: (1) All of the species encompassed by the claim share a substantial feature essential for a common utility, or (2) all of the species are *prima facie* obvious over each other. The first definition is based on the guidance provided by the CCPA in *In re Harnisch.* The second definition codifies the long-standing principle that it is improper to restrict between species that are *prima facie* obvious over each other.

The Office proposes to encourage applicants, when filing a claim that employs alternative language, to provide an explanation as to why the claim is directed to a single invention. Applicant may explain, for example, that the species share a substantial feature essential for a common utility. The feature could be a common structure, material, or act necessary for at least one shared specific, substantial, and credible utility (*i.e.*, 35 U.S.C. 101 utility). Alternatively, applicant may explain that the species are *prima facie* obvious over each other.

When applicant submits an explanation in a timely manner, the examiner will fully consider it. If convincing, the examiner will not object to the claim as being directed to more than one invention, nor will restriction be required under proposed § 1.140. Where the examiner disagrees with an applicant's statement under proposed § 1.140(b), the examiner must provide an explanation why applicant's statement is not convincing and why the claim is not limited to a single invention. The Office is of the opinion that providing applicants with the opportunity to explain upon filing why a claim that reads on multiple species using alternative language complies with the proposed rule ultimately will reduce the number of restriction requirements and shorten the overall time to a first Office action on the merits of the claims.

As noted above, the Office proposal defines two ways in which a claim that employs alternative language would meet the requirement of being limited to a single invention. However, a claim that encompasses more than one embodiment by using generic terminology (*i.e.*, without requiring selection from of a list of alternatives) would not be subject to the provisions of § 1.140. For example, a claim reciting the generic limitation ''a means for attaching,'' in the context of a specification that discloses staples, tape, and glue as suitable means would encompass several species. However, the ''means for attaching'' limitation would not subject the claim to the provisions of § 1.75(j) or (k) or § 1.140 because the claimed invention does not require, and is not limited to, the means specifically disclosed in the specification. By contrast, a claim reciting the limitation ''an attachment means selected from the group consisting of staples, glue, or tape'' would be subject to the provisions of proposed § 1.75(j) and (k) and § 1.140.

The Office also proposes that if an application seeks the benefit under title 35, United States Code, of a prior-filed application and discloses subject matter that was not disclosed in the prior-filed application, the applicant must identify which claim or claims in the application are disclosed in the manner provided by the first paragraph of 35 U.S.C. 112 in the prior-filed application. This proposal would reduce examination complexities and identify situations wherein a prior art reference that anticipates or renders *prima facie* obvious at least one species within the scope of a claim would not be available as prior art against another species if that species was set forth in a separate claim.

2. Format Requirements for a Claim With Species Presented as a Set of Alternatives. Under current practice, a claim that sets forth multiple independent and distinct inventions in the alternative via Markush format is examined in accordance with MPEP 803.02. Applicants frequently present claims that define alternative species in a complex manner, *e.g.*, defining alternatives by reference to a set of additional alternatives, setting forth alternatives that encompass the same species, and listing components that are not interchangeable as alternatives. Given the administrative difficulties that arise during the search and examination of claims that present species using alternative language and the proposal to require each claim to be limited to a single invention, the Office proposes to require a simplified format for the presentation of such claims and to set forth conditions that must be met by any claim that uses alternative language. It is generally understood that ''members of [a] Markush group are * * * alternatively usable for the purposes of the invention.'' *In re Driscoll*, 562 F.2d 1245, 1249, 195 USPQ 434, 436 (CCPA 1977). Similarly, with regard to international applications, the PCT Guidelines (paragraph 5.18) specifies that a claim can contain alternatives ''provided those alternatives are of a similar nature and can fairly be substituted one for another, and provided also that the number and presentation of alternatives is a single claim does not make the claim obscure or difficult to construe.'' The Office proposes to adopt language similar to that in the PCT Guidelines, specifically requiring that the number and presentation of alternatives in the claim not make the claim difficult to construe, and requiring that each alternative within a list of alternatives must be substitutable one for another. In addition, to reduce the complexity of determining whether a claim is directed to a single invention, the Office proposes to specify that no alternative may itself be defined as a set of further alternatives. Finally, the Office proposes to specify that no alternative may be encompassed by any other alternative within a list of alternatives, unless there is no other practical way to define the invention. When alternatives partially overlap in scope, it is more difficult to determine whether a single claim encompasses more than one invention. Thus, a single claim that includes alternatives that either fully overlap

(*e.g.*, ''selected from the group consisting of an adhesive agent, tape, and glue'') or partially overlap (*e.g.*, ''selected from the group consisting of citrus fruits and tropical fruits'') in scope may be subject to an objection. Applicants should file a series of individual claims from the broadest scope that they feel they are entitled to the narrowest scope they are willing to accept. Put differently, applicant should narrow the scope of protection sought via separate claims and not via nested sets of overlapping alternatives.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.75: Section 1.75(a) is proposed to be amended by adding the proviso that a claim must be limited to a single invention. While it has long been Office policy to exercise the discretionary authority granted in 35 U.S.C. 121 to restrict an application to a single invention, the Office has not yet established mechanisms for objecting to the format of a single claim that is directed to multiple independent and distinct inventions, or restricting a single claim to a single invention. Proposed § 1.75(a) would provide the basis for objecting to the format of a claim that is directed to two or more independent and distinct inventions. *See also* the proposed addition of § 1.140, which provides for the restriction of a claim to a single invention, and the proposed amendment to § 1.142(b), which provides that the propriety of a requirement for restriction will be determined without regard to whether the plural inventions are recited in separate claims or as alternatives within a single claim.

Section 1.75(d)(2) is proposed to be amended by deleting the reference to § 1.141 to § 1.146 as unnecessary in view of proposed changes to those rules. Paragraph (d)(2) is also proposed to be amended by adding the proviso that if an application seeks the benefit under title 35, United States Code, of a prior-filed application and discloses subject matter that was not disclosed in the prior-filed application, the applicant must identify which claim or claims in the application are disclosed in the manner provided by the first paragraph of 35 U.S.C. 112 in the prior-filed application.

Section 1.75(e) is proposed to be amended to replace ''the nature of the case admits, as in the case of'' with ''the application describes a claimed invention as'' to use more current terminology. Paragraphs (e)(1) and (e)(3) are proposed to be amended to replace the word ''combination'' with ''invention'' to clarify that this provision is applicable to any claimed invention, not just one considered to be a combination.

Section 1.75(j) is proposed to be added to set forth the required format for a claim that reads on multiple species using alternative language. A claim that does not comply with the provisions of this section would be subject to an objection. The Office proposes to add paragraph (j)(1) to specify that the number and presentation of alternatives in a claim must not make the claim difficult to construe. The proposed rule language is consistent with that of the PCT Guidelines (paragraph 5.18). Paragraphs (j)(2) and (j)(3) are proposed to be added to specify that no alternative can itself be defined as a set of further alternatives within a claim and that no alternative can be encompassed by any other alternative within a list of alternatives, unless there is no other practical way to define the invention.

Section 1.75(j)(4) is proposed to be added to require each alternative within a list of alternatives to be substitutable one for another. The proposed rule is consistent with paragraph 5.18 of the PCT Guidelines and current Office practice (*see* MPEP 2173.05(h)). Thus a claim that employs alternative language would not be in a proper format unless all of the alternatives are interchangeable, and substitution of one for another would result in the same invention.

Section 1.75(k) is proposed to be added to specify that a claim must be self-contained, without incorporating another part of the specification or drawings by reference, unless there is no other practical way to define the invention. If a claim incorporates another part of the specification or drawings by reference, and that portion of the specification or drawings defines a set of alternatives, the claim must comply with, and is subject to the provisions of, paragraph (j) of this section and § 1.140. This section is proposed to be added to ensure that a claim would receive the same treatment whether defined by alternative language explicitly set forth in the claim or defined by alternative language that is incorporated by reference to another portion of the specification.

Section 1.140: Section 1.140 is proposed to be added to require a claim to be limited to a single invention in applications filed under 35 U.S.C. 111(a). Paragraph (a) is proposed to be added to specify that a claim presenting alternatives must be limited to a single invention, and to specify that a claim would be considered as limited to a single invention where all the species encompassed by the claim meet at least one of the following two conditions: (i) Share a substantial feature essential for a common utility, or (ii) are *prima facie* obvious over each other.

Alternatives share a substantial feature necessary for a common utility when they share a utility that complies with the requirements of 35 U.S.C. 101. A substantial feature in this context is a feature, such as a particular structure, material, or act, without which the claimed alternatives would not retain the shared utility.

Paragraph (b) is proposed to be added to indicate that the presentation of a claim that reads on multiple species using alternative language may be accompanied by a statement explaining why the claim is limited to a single invention. This would provide the applicant with the opportunity to present an explanation as to why a claim is limited to a single invention before the Office determines whether an objection under proposed § 1.75(a) or a restriction requirement under proposed § 1.142 would be proper.

Section 1.141: Section 1.141(a) is proposed to be revised by replacing ''may not'' with the more permissive term ''should not'' in the context of claiming two or more independent and distinct inventions in one application. The proposed revision is consistent with current practice as the Director has not made restriction mandatory. Furthermore, the ''exception'' language in paragraph (a), i.e., that different species may be specifically claimed in different claims provided the application also includes an allowable claim generic thereto, is proposed to be deleted. If the application includes an allowable generic claim, restriction would be improper and the generic claim would define a single invention.

Section 1.141(b) is proposed to be revised to clarify when restriction would be appropriate where an application claims a product, a process of making that product, and a process of using that product. The proposed revision clarifies that a three-way restriction requirement can be made only where the process of making the product is distinct from the product, the process of using the product is distinct from the product, and the processes of making and using the product are distinct from each other.

Section 1.142: Section 1.142(a) is proposed to be revised to specify that the provisions therein authorize restriction requirements in applications filed under 35 U.S.C. 111(a).

The content of current paragraph (b) of § 1.142 is proposed to be moved to paragraph (d) and further modified. Section 1.142(b) as proposed recites that the propriety of a restriction requirement will be determined without regard to whether plural inventions are recited in separate claims or as alternatives within a single claim. This proposal, which substantively corresponds to § 1.475(e) (pertaining to unity of invention determinations in National Stage applications filed under 35 U.S.C. 371), provides support for an intra-claim restriction requirement, *i.e.*, a requirement to limit a single claim to a single invention.

Section 1.142(c) is proposed to be added to incorporate subject matter from current paragraph (b) and indicate that any claim limited solely to a non-elected invention, if not cancelled, is withdrawn from further consideration, although it is subject to reinstatement in the event the restriction requirement is withdrawn.

Section 1.142(d) is proposed to be added to provide that any claim that recites both an elected invention and a non-elected invention will be objected to as failing to comply with § 1.75(a), which requires each claim to be limited to a single invention. Section 1.142(d) as proposed would also provide that any non-elected invention must be canceled before a claim that recites both an elected invention and a non-elected invention would be allowed (subject to reconsideration and review as provided in §§ 1.143, 1.144, and 1.181).

Section 1.143: Section 1.143 is proposed to be revised to add a new paragraph (a), and to move the current paragraph, with clarifying revisions, to new paragraph (b). Paragraph (a) is proposed to be added to specify that the election of an invention or species may be made with or without traverse, although traversal is necessary to preserve the right to petition. Paragraph (b) is proposed to be revised to indicate that the applicant must indicate an election of one invention or species for prosecution, and that any request for reconsideration of the requirement must distinctly and specifically point out supposed errors in the requirement.

Section 1.144: Section 1.144 is proposed to be revised to clarify when an applicant may petition the Director to review the requirement for restriction. Paragraph (a) as proposed requires a timely request for reconsideration of the requirement. Paragraph (b) as proposed provides that a petition may be filed after a restriction requirement is made final or a second requirement for restriction is made, even if the second requirement is not made final, whereas the present rule requires a final restriction requirement before petitioning. Proposed paragraph (b) also sets forth when a petition must be filed, *i.e.*, within the earlier of two months of the mailing date of the final requirement for restriction from which relief is requested or the filing of a Notice of Appeal. Paragraph (c) is proposed to be added to specify that a petition before the second requirement will be dismissed as premature, and that filing a petition does not obviate applicant's obligation to timely reply to the remainder of the action. Paragraph (d) is proposed to be added to specify that the two-month period for filing the petition is not extendable and that late filed petitions may be dismissed as untimely.

Section 1.145: Section 1.145 is proposed to be revised by specifying that after an Office action on an application, if the applicant presents by amendment one or more claims directed to an invention distinct from and independent of the invention previously claimed, the applicant may be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143, 1.144 and 1.181. The current rule indicates applicant ''will'' be required to restrict, and does not reference § 1.181.

Section 1.146: Section 1.146 is proposed to be revised to permit an examiner, in the course of examining a claim directed to a single invention that encompasses multiple patentably distinct species, to require an election of one disclosed species of the claim for initial search and examination purposes.

Section 1.146(b) is proposed to be added to specify that the examiner may require the applicant to restrict a claim that was subject to an election requirement under paragraph (a) of this section to the one or more species that were searched and examined if any species encompassed by the claim is not patentable.

Under current practice, before searching the prior art for the claimed invention, an examiner makes an initial determination as to whether the claims presented are directed to a single invention or multiple independent and distinct inventions. If a single claim encompasses multiple species, the examiner may require a provisional election of a single species. *See* MPEP 803.02 and 809.

Under the proposed rule, when a claim encompasses multiple species, an examiner may continue to require a provisional election of a single disclosed species, even if a claim is limited to a single invention. For example, if a specification discloses staples, tape, and glue as exemplary ''means for attaching,'' an applicant may present one claim reciting the limitation ''a means for attaching'' (which clearly includes within its scope multiple species) and in addition present one or more claims that specify the particular means. If each species that employs a specific means is patentably distinct from the other species, the ''means for attaching'' claim would be a claim that links together otherwise restrictable inventions. If an applicant elects a particular means in reply to a requirement for a provisional election of a single disclosed species and the examiner determines that species is allowable, the examiner would be required, consistent with current practice, to continue to examine the ''means for attaching'' claim until a determination on the patentability of the claim is reached. If the ''means for attaching'' claim is allowable, then any claim that depends from or otherwise requires all the limitations of the allowable claim would be examined for patentability and the provisional election would no longer be effective.

In addition to being applicable to a claim that defines multiple species using generic terminology, *i.e.*, without requiring selection of an alternative, the proposed provision would also apply to a claim that uses alternative language. Evidence that supports a finding that one species does not comply with the requirements of 35 U.S.C. 101 or 112 would not necessarily support a finding of lack of utility, enablement, or adequate written description with regard to any other species. Thus, where the elected species is patentable but the claims are not enabled or adequately described over their entire scope, the proposed rule would permit an examiner to require restriction of the claims to the elected species (and allowable obvious variants thereof).

Section 1.499: This section is proposed to be revised by designating the currently undesignated paragraph as paragraph (a) and adding new paragraphs (b), (c), and (d).

Paragraph (b) is proposed to be added to address treatment of a claim limited solely to a non-elected invention in a national stage application. The language corresponds to that in proposed § 1.142(c). Paragraph (c) is proposed to be added to indicate that any claim in a national stage application that recites in the alternative both an elected and a non-elected invention will be objected to as failing to comply with § 1.475. The language is analogous to that in proposed § 1.142(d). Paragraph (d) is

proposed to be added to set forth that if, after an Office action in a national stage application, the applicant presents by amendment one or more claims directed to an invention that lacks unity of invention (§ 1.475) with the invention previously claimed, the applicant may be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143, 1.144 and 1.181. The language is analogous to that it proposed § 1.145.

Rule Making Considerations

Administrative Procedure Act: As discussed previously, the court in *Harnisch* invited the Office to exercise its rule making authority under former 35 U.S.C. 6(a) to anticipate and forestall the ''procedural problems'' surrounding Markush claims. 631 F.2d at 722 n.7, 206 USPQ at 306 n.7. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure. *See Bachow Communs., Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. 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); *see also Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark 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)). Therefore, the changes being proposed in this notice involve interpretive rules, or rules of agency practice and procedure. Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). Nevertheless, the Office is seeking public comment on proposed changes to obtain the benefit of such input prior to adopting changes to the rules of practice on these issues.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

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), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Paperwork Reduction Act: This notice 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 collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0031, and 0651–0032. The United States Patent and Trademark Office is not resubmitting the other information collections listed above to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collections under these OMB control numbers. The principal impacts of the changes in this proposed rule are to: (1) Expressly require that a claim be limited to a single invention; and (2) specify the conditions under which a claim that reads on multiple species by using alternative language to list species) will be treated as limited to a single invention.

Interested persons are requested to send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert A. Clarke, Deputy Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

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 1

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.75 is amended by revising paragraphs (a), (d)(2), and (e), and adding paragraphs (j) and (k) to read as follows:

§ 1.75 Claims.

(a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his or her invention or discovery. A claim must be limited to a single invention.

* * * * *

(d) * * *

(2) If an application seeks the benefit under title 35, United States Code, of a prior-filed application and discloses subject matter that was not disclosed in the prior-filed application, the applicant must identify which claim or claims in the application are disclosed in the manner provided by the first paragraph of 35 U.S.C. 112 in the prior-filed application.

(e) Where the application describes a claimed invention as an improvement, any independent claim should contain in the following order:

(1) A preamble comprising a general description of all the elements or steps of the claimed invention which are conventional or known;

(2) A phrase such as ''wherein the improvement comprises''; and

(3) Those elements, steps, and/or relationships which constitute that portion of the claimed invention which the applicant considers as the new or improved portion.

* * * * *

(j) A claim that reads on multiple species by using alternative language must meet the following conditions:

(1) The number and presentation of alternatives in the claim does not make the claim difficult to construe;

(2) No alternative is defined as a set of further alternatives within the claim; and

(3) No alternative is encompassed by any other alternative within a list of alternatives, unless there is no other practical way to define the invention.

(4) Each alternative within a list of alternatives must be substitutable one for another.

(k) A claim may not incorporate another part of the specification or drawings by reference, unless there is no other practical way to define the invention. If a claim incorporates

another part of the specification or drawings by reference, and that portion of the specification or drawings sets forth alternatives, the claim must comply with, and is subject to the provisions of, paragraph (j) of this section and § 1.140.

3. Section 1.140 is added after the undesignated center heading ''Joinder of Inventions in One Application; Restriction'' to read as follows:

§ 1.140 Requirement for a claim to be limited to a single invention in an application filed under 35 U.S.C. 111(a).

(a) Two or more independent and distinct inventions may not be claimed in a single claim. See § 1.75(a). A claim that reads on multiple species using alternative language is limited to a single invention when all the species encompassed by the claim meet at least one of the following two conditions:

(1) The species share a substantial feature essential for a common utility, or

(2) The species are *prima facie* obvious over each other.

(b) The presentation of a claim that reads on multiple species using alternative language (§ 1.75(j)) may be accompanied by a statement explaining why the claim is limited to a single invention. Such a statement shall be considered by the Office if filed by the applicant at the same time as the presentation of such a claim and may be considered by the Office if filed by the applicant after the presentation of such a claim but before the mailing date of any restriction requirement or action on the merits.

4. Section 1.141 is revised to read as follows:

§ 1.141 Different inventions in one application filed under 35 U.S.C. 111(a).

(a) Two or more independent and distinct inventions should not be claimed in one application.

(b) Where claims to a product, process of making the product, and process of using the product are included in an application, a three-way requirement for restriction can be made only where the process of making the product is distinct from the product, the process of using the product is distinct from the product, and the processes of making and using the product are distinct from each other.

5. Section 1.142 is revised to read as follows:

§ 1.142 Requirement for restriction to a single invention in an application filed under 35 U.S.C. 111(a).

(a) If two or more independent and distinct inventions are claimed in a single application filed under 35 U.S.C. 111(a), the examiner in an Office action may require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction. Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.

(b) The propriety of a requirement for restriction shall be determined without regard to whether the plural inventions are recited in separate claims or as alternatives within a single claim.

(c) Any claim limited solely to a non-elected invention, if not canceled, is withdrawn from further consideration. Any claim withdrawn from further consideration as a result of a restriction requirement and election is subject to reinstatement in the event the restriction requirement is withdrawn or overruled.

(d) Any claim that recites both an elected and a non-elected invention in the alternative will be objected to as failing to comply with § 1.75(a). Any non-elected invention must be canceled before the claim will be allowed, subject to reconsideration and review as provided in §§ 1.143, 1.144 and 1.181.

6. Section 1.143 is revised to read as follows:

§ 1.143 Reconsideration of requirement for restriction.

(a) The election of an invention or species may be made with or without traverse. To preserve a right to seek reconsideration or petition for review of a requirement for restriction, the election must be with traverse.

(b) If the applicant traverses a requirement for restriction, he or she may request reconsideration of the requirement, including withdrawal or modification, distinctly and specifically pointing out supposed errors in the requirement. In requesting reconsideration, the applicant must indicate an election of one invention or species for prosecution, which invention or species shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request.

7. Section 1.144 is revised to read as follows:

§ 1.144 Petition from requirement for restriction.

(a) Applicant may petition the Director to review the requirement for restriction. A petition will not be considered unless reconsideration of the requirement was timely requested (see § 1.143).

(b) A petition may be filed after the requirement for restriction is made final or a second requirement for restriction is made, even if the second requirement is not final. The petition must be filed within the earlier of:

(1) Two months of the mailing date of the final requirement for restriction from which relief is requested; or

(2) The filing of a Notice of Appeal.

(c) A petition filed before the earlier of a final restriction requirement or a second requirement for restriction will be dismissed as premature. Filing a petition does not obviate applicant's obligation to timely reply to the remainder of the action.

(d) The two-month period for filing a petition is not extendable. Late filed petitions may be dismissed as untimely (see § 1.181).

8. Section 1.145 is revised to read as follows:

§ 1.145 Subsequent presentation of claims for a different invention in an application filed under 35 U.S.C. 111(a).

If, after an Office action on an application, the applicant presents by amendment one or more claims directed to an invention distinct from and independent of the invention previously claimed, the applicant may be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143, 1.144 and 1.181.

9. Section 1.146 is revised to read as follows:

§ 1.146 Requirement for an election of a single species in an application filed under 35 U.S.C. 111(a).

(a) If one or more claims are directed to a single invention but encompass multiple disclosed and patentably distinct species, regardless of whether the claim uses alternative language, the examiner may require the applicant to elect one species that is disclosed in the application as filed for initial search and examination.

(b) The examiner may require the applicant to restrict any claim that was subject to an election requirement under paragraph (a) of this section to the one or more species that were searched and examined if any species encompassed by the claim is not patentable.

10. Section 1.499 is revised to designate the current paragraph as paragraph (a) and to add paragraphs (b), (c), and (d) to read as follows:

§ 1.499 Unity of invention during the national stage.

* * * * *

(b) Any claim limited solely to a non-elected invention, if not canceled, will be withdrawn from further consideration. Any claim withdrawn

from further consideration is subject to reinstatement in the event the restriction requirement is withdrawn or overruled.

(c) Any claim that recites in the alternative both an elected and a non-elected invention will be objected to as failing to comply with § 1.475. Any non-elected invention must be canceled before the claim will be allowed, unless the restriction requirement is withdrawn or overruled.

(d) If, after an Office action on an application, the applicant presents by amendment one or more claims directed to an invention that lacks unity of invention (§ 1.475) with the invention previously claimed, the applicant may be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143, 1.144 and 1.181.

Dated: August 2, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–15591 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2007–0016; FRL–8451–7]

Florida: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Florida has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Florida. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2007–0016 by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: johnson.otis@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Otis Johnson, Permit and State Programs Section, RCRA Programs/Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.
- *Hand Delivery:* Otis Johnson, Permit and State Programs Section, RCRA Programs/Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R04–RCRA–2007–0016. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy. You may view and copy Florida's application at The EPA, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The office telephone number is (404) 562–8041.

You may also view and copy Florida's application from 8 a.m. to 5 p.m. at The Florida Department of Environmental Protection, Twin Towers Building, 2600 Blair Stone Road, MS 4560, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Permits and State Programs Section, RCRA Programs/Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562–8481; fax number: (404) 562–9964; email address: *johnson.otis@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: July 13, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–15671 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket No. PHMSA–2007–28136]

Pipeline Safety: Hazardous Liquid Pipelines Transporting Ethanol, Ethanol Blends, and other Biofuels

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of policy statement and request for comments.

SUMMARY: The Department of Transportation (DOT), in coordination with the Department of Energy, Department of Agriculture, and others, is considering current and future transportation challenges posed by growing demand for ethanol and other biofuels and biofuel blends. Although pipelines have long been a primary mode for high volume transportation of gasoline and other petroleum products, most biofuels used in the U.S. today are transported exclusively by marine vessel, rail, and/or highway. In support of the President's energy agenda, DOT is prepared to facilitate pipeline options by sponsoring research and development, resolving technical issues, and, if necessary, clarifying safety standards.

The PHMSA is the DOT agency with regulatory authority over the safe and reliable transportation of hazardous materials by all modes, including pipelines. The PHMSA's Hazardous Materials Regulations govern the transportation of ethanol and other biofuels and blends by rail, air, motor carrier, and barge. The PHMSA's Pipeline Safety Regulations cover the transportation by pipeline of all petroleum products, including gasoline blended with biofuel. In this Notice, PHMSA sets forth a formal determination (for purposes of 49 U.S.C. 60101(a)(4)(B)) that the transportation of unblended biofuels by pipeline is subject to the agency's jurisdiction and invites comments on the adequacy of existing regulatory definitions and standards.

This Notice also describes and invites comments on the agency's ongoing efforts to identify and address the short-, medium-, and long-term opportunities and challenges associated with transporting biofuels. The PHMSA is seeking comments on technical issues, adequacy of standards, and research and development needs associated with the transportation of biofuels by pipeline. We describe and invite comments on the agency's ongoing efforts to prepare communities and emergency responders to mitigate hazards associated with transportation involving new fuels.

DATES: Please submit comments by September 10, 2007.

ADDRESSES: Comments should reference Docket No. PHMSA–2007–28136 and may be submitted in the following ways:

- *DOT Web Site: http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- *Fax:* 1–202–493–2251.
- *Mail:* Docket: U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, 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.
- *E-Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: Identify the docket number, PHMSA–2007–28136, at the beginning of your comments. Mail your comments and send two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: The PHMSA posts all comments without changes or edits to *http://dms.dot.gov,* including any personal information provided.

Privacy Act Statement

Anyone can search the electronic form of all comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477), and is on the Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joy Kadnar, Office of Pipeline Safety, 202–366–4595, or by e-mail at *joy.kadnar@dot.gov;* Larry White, Office of Chief Counsel, 202–366–4400, or by e-mail at *lawrence.white@dot.gov;* or Bob Richard, Office of Hazardous Materials Safety, 202–366–0656, or by e-mail at *bob.richard@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Energy Policy and the Growing Demand for Biofuels. In August 2005, the President signed the Energy Policy Act of 2005, providing incentives for the development of renewable energy and establishing the foundation for the increased production and use of ethanol and other biofuels. Building on the Energy Policy Act's clean energy foundation, the President announced the Advanced Energy Initiative in the 2006 State of the Union Address. The Advanced Energy Initiative focuses on increasing research and development to encourage technological breakthroughs in the transportation and power sectors that will diversify our resource portfolio. Together, these initiatives will reduce U.S. reliance on foreign oil by increasing the use of renewable fuels, such as ethanol and other biofuels.

Today, nearly half of all U.S. gasoline contains some ethanol (mostly blended at the 10 percent level or lower). In 2006, the U.S. consumed roughly five billion gallons of biofuels (mostly ethanol); these five billion gallons were blended into roughly 65 billion gallons of gasoline. Federal energy policy favors rapid growth in biofuels over the next decade. In his 2007 State of the Union Address, President Bush challenged the Nation to reduce consumption of oil by 20 percent over the next ten years. The President's 20-in-10 plan calls for expanding consumption of alternative fuels (including biofuels) from five billion gallons in 2007 to 35 billion gallons in 2017.

Transportation Requirements. In support of the 20-in-10 plan, DOT is stepping up efforts to identify and address transportation issues associated with increased use of biofuels. Because our national transportation system is fueled largely by refined petroleum products, the transition to higher concentration biofuel blends has implications for most DOT programs, including fuel efficiency and safety programs administered by DOT's National Highway Traffic Safety Administration.

This Notice focuses specifically on the movement of biofuels and biofuel blends as commodities in transportation and the need for safe, cost-effective transportation solutions. Most ethanol in use today is transported from production or import locations by highway, rail, and/or barge and blended with gasoline at or near the point of

retail distribution. To sustain market growth needed to meet current targets, we believe that pipelines must be an option for high-volume transportation of biofuel products.

A large pipeline can transport roughly two million barrels of gasoline a day. By way of comparison, 9,375 large semi-truck tankers are required to transport two million barrels of product. It takes twenty-four 100-car unit trains extending three miles each, or ten 15-unit barge tows, to transport two million barrels. Trucks, vessels, and trains consume diesel or other liquid fuels and also contribute to congestion in our Nation's freight and passenger transportation corridors. Further, as the National Transportation Safety Board has observed, pipeline transportation has a consistently lower accident rate than other modes.

Facilitating Transportation Solutions. Within the Federal Government, PHMSA has regulatory responsibility for the protection of people, property, and the environment from the risks of pipeline transportation. The agency carries out this responsibility through regulation, oversight, enforcement, emergency response preparation, and research and development, all targeted at reducing the likelihood and consequence of pipeline incidents. The PHMSA's Integrity Management regulations for hazardous liquid pipelines require operators to develop and implement comprehensive plans for addressing the range of risks facing their pipelines, taking account of all relevant risk variables, including the nature and properties of the particular hazardous materials moved.

The PHMSA is working with other Federal agencies and a broad enterprise of stakeholders—including industry, standards organizations, and emergency responders—to ensure that adequate design and operating standards for biofuel pipelines are in place or, if necessary, can be further developed in accordance with current pipeline data and technology. The American Petroleum Institute (API) and the Association of Oil Pipe Lines (AOPL) have provided PHMSA with information on their progress analyzing safety and integrity issues associated with biofuel pipelines and shared a proposed research agenda with PHMSA and other agencies. The PHMSA has begun a technical assessment with the Pipeline Research Council International on the potential for ethanol induced stress corrosion cracking in existing pipeline infrastructure used to transport ethanol and various ethanol blended fuels. Using its authority under chapter 601 of the U.S. Code, PHMSA expanded its research and development efforts to focus on short-, medium- and long-term challenges of transporting biofuels in existing products pipelines and in dedicated biofuel pipelines.

The PHMSA participates on various panels and working groups, including the DOT Biofuels Panel and the 20-in-10 Biofuels Working Group, and collaborates on biofuel activities with other agencies and organizations. To better understand the opportunities, challenges, and potential technical issues, PHMSA invited speakers to its February 2007 Research and Development Forum in New Orleans, Louisiana to discuss current standards and technical studies and to identify research and development gaps related to biofuel transportation by pipeline. As discussed more fully below, PHMSA has also partnered with the emergency response community to upgrade education and training efforts and develop optimal response techniques and procedures for responding to biofuel spill incidents.

1. Pipeline Research and Development—Invitation To Comment

The PHMSA is targeting some of its research and development activity at advancing the most promising technologies for the safe operation of biofuel pipelines. The challenge is to identify and quantify any safety and reliability threats to biofuel pipelines and to remove or manage these threats through a risk-based, data driven integrity management approach.

Although pipelines are highly efficient, they have not been used on a widespread basis for transporting gasoline-ethanol blends. This is partially a function of unresolved technical and operational issues that would affect both the use of existing products pipelines and the prospect of building new, dedicated biofuel pipelines. These include metallurgical issues, such as internal corrosion and stress corrosion cracking, and operational issues, including the performance of seals, gaskets and internal coatings. The PHMSA expects these technical issues to be resolved through ongoing short-term technical assessments and longer-range research and development.

The risk of product contamination is also a significant factor. The PHMSA understands that the industry is concerned about the ability of transported gasoline-ethanol blends to meet the ASTM specification for gasoline, D 4814—Standard Specification for Automotive Spark-Ignition Engine Fuel due to ethanol's sensitivity to water. The U.S. pipeline system is a ''wet system'' with moisture introduced from the transport of various products. Unless measures are undertaken to remove or control moisture in the system, ethanol and ethanol blends could potentially absorb water and arrive at destination off specification. Additionally, many pipeline segments may need to undergo preparatory cleaning to remove built up lacquers, gums, and deposits in the system. Otherwise, the solvency effect of ethanol could remove such deposits, potentially contaminating the ethanol and trailing products in the system.

These issues are challenging, but by no means insurmountable. Research and development focusing on metallurgical, operational, and maintenance issues should aid in their resolution and will build confidence in the use of pipelines as the primary carrier of large volumes of gasoline-ethanol blends. The PHMSA is reaching out to a broad enterprise of stakeholders to better understand and help address all anticipated challenges to the transportation of biofuels and biofuel blends by pipeline. We will partner with other agencies, standards organizations, and private industry to coordinate research projects to avoid redundant efforts.

The research strategy put forward by API and AOPL, for example, suggests an approach that:

A. Identifies which blends can be moved in existing systems with little or no modification to the system;

B. Identifies which blends can be moved in existing systems with appreciable modifications; and

C. Identifies which blends cannot be practically moved in existing systems but could be moved in specially designed new transmission or short-haul distribution systems.

Research would be focused on the near-term operational and system integrity issues associated with transporting blends such as E10, E20 and E85 in existing petroleum products pipelines. Issues that need to be addressed include water pick-up, phase separation, material effects, solvent effects, the use of drag reducing agents, transmix injection and processing, and other ways operational processes may be affected.

The PHMSA encourages researchers to identify pipeline system modifications that address the unique risks associated with biofuels without rendering the pipeline unsuitable for transporting traditional energy commodities and identify those blends that cannot be practically transported in pipelines without a major overhaul. Additional research would focus on the

potential for integrity threats, such as stress corrosion cracking, associated with the long-term use of existing pipeline infrastructure and dedicated biofuel pipelines. This research should lead to the development of long-term mitigation strategies, design and operating specifications, and guidelines for the construction of new pipelines dedicated to ethanol or biofuel service.

The PHMSA recently issued a Broad Agency Announcement seeking white papers on research and development projects and coordinated programs to address issues associated with transportation of ethanol and biofuels by pipeline. The PHMSA is requesting information from pipeline operators, standards development bodies and organizations, trade associations, government agencies, other organizations, and the public regarding research and development, the adequacy of existing standards, and any other pertinent issues related to ethanol and other biofuels transportation by pipeline. Ultimately, the goal is to work with standards developing organizations to move this new knowledge into consensus standards.

2. Emergency Response—Invitation To Comment

The PHMSA has a long-standing partnership with the emergency response community. We have taken steps to educate responders on hazard communication and identification, safe incident mitigation, and fire suppression measures for responding to spill incidents involving ethanol and other biofuels in transportation. Because of ethanol's characteristics, specific emergency response measures must be taken by pipeline operators and first responders in the event of a release, including the use of appropriate extinguishing agents and foams. The PHMSA has partnered with the National Association of State Fire Marshals (NASFM), the Renewable Fuels Association (RFA), the International Association of Fire Chiefs (IAFC), the National Fire Protection Association, the Independent Liquid Terminal Association (ILTA), the National Fire Protection Association (NFPA), Kidde Fire Fighting, and other organizations and individuals in order to assist in educating first responders in fighting ethanol fires. The primary purpose of this coalition is to bring together key stakeholders to share information on various projects and efforts. A number of projects have been initiated that involve testing of various foams and other extinguishing agents, as well as the development of training materials for emergency responders.

In June 2006, PHMSA issued a Safety Alert to provide emergency responders with guidance on appropriate procedures for responding to incidents involving fuel mixtures containing ethanol (*http://hazmat.dot.gov/E–85_042606.pdf*). In addition, PHMSA provides Hazardous Material Emergency Preparedness Grants to emergency responders for planning and training, including training for responses to incidents involving ethanol-gasoline mixtures. To help emergency responders utilize the most effective emergency response procedures for incidents involving fuel mixtures containing ethanol (or ''ethyl alcohol'') and gasoline in various concentrations, PHMSA has proposed establishing a specific United Nations (UN) identification number and proper shipping name for ethanol-gasoline blended fuels with more than ten percent ethanol.

In August 2006, PHMSA published a Notice of Proposed Rulemaking, proposing to add a new entry ''Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than ten percent ethanol, 3, UN3475, II'' to the Hazardous Materials Table (HMT). The PHMSA also proposed revising the entry for ''Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol, 3, NA1203, II'' to limit this entry to gasoline mixtures with no more than ten percent alcohol. The 2004 Emergency Response Guidebook (ERG2004) refers to Guide 127 (Flammable Liquids Polar/Water-Miscible) for response to incidents involving Alcohols, n.o.s., 3, UN1987, and Denatured alcohol, 3, NA1987. Guide 127 specifies the use of alcohol resistant foam. In early 2008, PHMSA will publish and distribute an updated ERG. The updated ERG will include appropriate guidance for the initial response to incidents involving ethanol-gasoline mixtures and will also include information on pipeline markers.

The PHMSA encourages State fire marshals and other first responders to inform us about issues associated with emergency response for biofuel incidents including the need for studies of the effectiveness of response techniques and the development of educational materials. We are interested in comments relative to how mixtures of ethanol and gasoline varying between 10 percent to 20 percent should be addressed and if additional research is needed to assess particular characteristics of these mixtures, how they should be described, and the appropriate response methods.

3. Oversight of Pipelines Transporting Biofuels and Biofuel Blends—Invitation To Comment

Pursuant to the pipeline safety laws, 49 U.S.C. 60101 *et seq.*, PHMSA has jurisdiction over the design, construction, operation and maintenance of pipelines transporting ''hazardous liquids.'' By statute, the term ''hazardous liquid'' refers to ''petroleum or a petroleum product'' and ''a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property'' when transported by pipeline in a liquid state. 49 U.S.C. 60101(a)(4). Under this authority, PHMSA previously has established safety standards for pipelines carrying petroleum, petroleum products, anhydrous ammonia, and carbon dioxide in a supercritical or dense vapor state.

The PHMSA considers all biofuel-gasoline blends to be ''petroleum products,'' within the meaning of 49 CFR 195.2, regardless of their relative biofuel/gasoline content. Accordingly, any pipeline used to transport such blends, whether in batches or in dedicated infrastructure, would be subject to PHMSA's existing standards for hazardous liquid pipelines. Under those standards, the pipeline operator is responsible for establishing that any material moved in the pipeline ''is chemically compatible with both the pipeline, including all components, and any other commodity that it may come into contact with while in the pipeline.'' (49 CFR 195.4).

Unblended ethanol and other biofuels produced by biological fermentation and vegetable- and animal-oil based biodiesel products are not ''petroleum products,'' as we have defined that term (49 CFR 195.2). However, based on their physical properties, these substances clearly meet the alternative definition of ''hazardous liquid'' under 49 U.S.C. 60101(a)(4)(B). Ethanol is a highly flammable liquid with explosive limits in the range of 3.5 percent to 19 percent in air and a flash point of 54 degrees Fahrenheit. (By comparison, the explosive range for natural gas varies between five and 15 percent in air. Substances with a flash point lower than 100 degrees Fahrenheit are considered flammable.) The flash point of an ethanol-water mixture increases as ethanol is diluted with water. The flash point of an 80 percent ethanol/water mix is about 75 degrees Fahrenheit, and for 70 percent ethanol-water mix is about 84 degrees Fahrenheit. Ethanol vapors are also combustible, heavier than air, and may form an explosive mixture when combined with air.

Similar to highly volatile liquids, ethanol vapors may travel considerable distances to sources of ignition and flash back. Pure or highly concentrated ethanol (E–85) may permanently damage living tissue on contact. Exposure to ethanol vapors in high concentrations or for prolonged periods is harmful to human health. In concentrations greater than 50 percent, ethanol can cause local dehydration and lesions. Absorption, which occurs swiftly from the gastrointestinal tract, causes euphoria, with subsequent dizziness, inebriation, paralysis, diminished reflex, excitability, cyanosis, narcosis and respiratory paralysis.

For these reasons, ethanol and other biofuels are substances that may pose ''unreasonable risks to life or property,'' within the meaning of 49 U.S.C. 60101(a)(4)(B)). Accordingly, these materials constitute ''hazardous liquids'' for purposes of the pipeline safety laws and regulations.

The PHMSA is considering whether it is necessary to amend the definition of hazardous liquid in 49 CFR 195.2 to expressly include ethanol and biofuels. Such an amendment would confirm that the transportation of pure ethanol or biofuels by dedicated biofuel pipelines is subject to Part 195. If biofuels will always be denatured by blending them with petroleum products prior to transporting them by pipeline, however, amending this regulatory definition may be unnecessary. Accordingly, PHMSA invites comments on whether we should amend 49 CFR Part 195 to expressly include (non-blended) ethanol and biofuels in the definition of hazardous liquid. The PHMSA also seeks comments on whether any of the existing requirements for hazardous liquid pipelines in Part 195 should not apply to ethanol and biofuel pipelines and if not, why not. Additionally, we invite comments on whether there is a need for any requirements to specifically address pipelines transporting ethanol and biofuels.

After PHMSA reviews any comments and other information received in response to this notice, we will announce any additional activities PHMSA plans to undertake or coordinate in these areas. If we determine, after reviewing the comments, that Part 195 should be amended to address the transportation of biofuel or biofuel-gasoline blends, we will publish any proposed amendment for public comment in accordance with the Administrative Procedures Act.

Authority: 49 U.S.C. 60101 *et seq.*

Issued in Washington, DC on July 31, 2007.

Thomas J. Barrett,

Administrator.

[FR Doc. E7–15615 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 72, No. 154
Friday, August 10, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, August 17, 2007. The meeting will be held in Room MR–1 at the Vicksburg, MS at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call to Order—9 a.m.
I. Chairman's Welcome.
II. Preservation Awards Presentation.
III. Report of the Native American Advisory Group.
IV. Implementation of ACHP Recommendations from the Preserve America Summit.
  A. Implementation Strategy and Actions.
  B. Preserve America/Save America's Treasures Authorizing Legislation.
V. Gulf Coast Recovery Efforts of the Mississippi, Louisiana, and Alabama State Historic Preservation Offices.
VI. Preservation Initiatives Committee.
  A. Legislative Update.
  B. Preserve America and the National Park Service Centennial Challenge.
VII. Federal Agency Programs Committee.
  A. Alternate Procedures of Corps of Engineers' Appendix C.
  B. Guidelines for Agency Preparation of Section 3 Reports.
  C. Tribal Notification Process for Regional and National Section 106 Initiatives.
  D. National Park Service Battlefield Landscape Restoration Initiative.
VIII. Communications, Education, and Outreach Committee.
  A. 2008 Preserve America Presidential Award Nominations.
  B. Media and Communications Outreach.
IX. Chairman's Report.
  A. ACHP Alumni Foundation.
  B. ACHP FY 2009 Budget Request.
X. Executive Director's Report.
XI. New Business.
XII. Adjourn.

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: August 5, 2007.

John Fowler,

Executive Director.

[FR Doc. 07–3897 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

ACTION: Notice of meeting.

SUMMARY: This South Gifford Pinchot National Forest Resource Advisory Committee will meet on Thursday, September 6th at the Skamania County Courthouse Annex, 170 NW. Vancouver Ave., Stevenson, Washington. The meeting will begin at 9:30 a.m. and continue until 5 p.m. The purpose of the meeting is to review ongoing Title II and III projects, elect a chair, set an indirect project percentages, and make recommendations on proposals for Title II funding of projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All South Gifford Pinchot National Forest Resources Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:45 a.m. on September 6, 2007. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Strebig, Public Affairs Specialist, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: July 27, 2007

Lynn Burditt,

Deputy Forest Supervisor.

[FR Doc. 07–3826 Filed 8–9–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Friday, September 7, 2007 at the Salkum Timberland Library, 2480 U.S. Highway 12, Salkum, Washington 98582–0129. The meeting will begin at 10 a.m. and continue until 3 p.m. The purpose of the meeting is to: Review ongoing Title II and III projects, elect a chairperson and

vice-chair, set an indirect project percentage, review summary of Title II and Title III accomplishments and make recommendations on proposals for Title II funding of projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. the ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 10:15 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Strebig, Public Affairs Specialist, at (360) 891–5005, or write to Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: July 27, 2007.

Lynn Burditt,

Deputy Forest Supervisor.

[FR Doc. 07–3830 Filed 8–9–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 7 of the West Fork Point Remove Creek Watershed; Conway County, AR

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 7 of the West Fork Point Remove Creek Watershed, Conway County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Rm. 3416 Federal Building, 700 West Capital Avenue, Little Rock, AR 72201–3225. Telephone (501) 301–3100

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure (FWRS) No. 7 to maintain the present level of flood control and comply with the current dam safety and performance standards. Local Sponsoring Organizations for the rehabilitation of FWRS No. 7 are the Point Remove Watershed Improvement District and the Conway County Conservation District.

Rehabilitation of FWRS No. 7 will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of

- Lengthening the principal spillway conduit by 42 feet to accommodate the new top of dam elevation. The existing principal spillway inlet and conduit size are adequate.
- Maintaining the principal spillway crest at Elevation 539.4, the current permanent pool elevation.
- Modifying the existing 200-foot auxiliary spillway to meet integrity requirements by increasing the length of the level crest section from 50 feet to 150 feet.
- Increase the size of the principal spillway low stage port opening to meet 100-year, 10 day PSH drawdown criteria.
- Raising the top of dam from Elevation 566.0 feet to Elevation 570.9 feet to safely pass the 6-hour to 72-hour duration PMP storms.

All disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, or cultural resources. Adverse impacts to wetlands will be temporary and minor.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $871,800, of which $624,300 will be paid from the Small Watershed Rehabilitation funds and $247,500 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kalven L. Trice, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 31, 2007.

Kalven L. Trice,

State Conservationist.

[FR Doc. E7–15626 Filed 8–9–07; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletion

ACTION: Proposed Deletion from the Procurement List.

SUMMARY: This action deletes from the Procurement List a service previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 9, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Mail Support Services, Department of Justice, Drug Enforcement Agency, Newark, NJ.
NPA: The First Occupational Center of New Jersey, Orange, NJ.
Contracting Activity: Drug Enforcement Agency, Washington, DC.

Kimberly M. Zeich

Director, Program Operations.

[FR Doc. E7–15667 Filed 8–9–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* September 9, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION: On May 11, June 8 and June 15, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 26779; 31805; 33200) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

File, Folder, Classification

NSN: 7530–00–NIB–0816—Dark Green, Letter Size
NSN: 7530–00–NIB–0817—Light Blue, Letter Size
NSN: 7530–00–NIB–0818—Dark Blue, Letter Size
NSN: 7530–00–NIB–0819—Yellow, Letter Size
NSN: 7530–00–NIB–0820—Dark Red, Letter Size
NSN: 7530–00–NIB–0821—Earth Red, Letter Size
NPA: Georgia Industries for the Blind, Bainbridge, GA

Inkjet Printer Cartridge

NSN: 7510–00–NIB–0780—compatible with Canon Part No. BCI–3ePC/6PC. Cyan
NSN: 7510–00–NIB–0781—compatible with Canon Part No. BCI–3ePM/6PM. Magenta
NSN: 7510–00–NIB–0782—compatible with Canon Part No. BCI–15BK. Black
NSN: 7510–00–NIB–0783—compatible with Canon Part No. BCI–21/24CL. Tri-color
NSN: 7510–00–NIB–0784—compatible with Epson Part No. T018201. Tri-color
NSN: 7510–00–NIB–0785—compatible with Epson Part No. T029201. Tri-color
NSN: 7510–00–NIB–0786—compatible with Epson Part No. T041020. Tri-color
NSN: 7510–00–NIB–0787—compatible with Epson Part No. T044120. Black
NSN: 7510–00–NIB–0788—compatible with Epson Part No. T044220. Cyan
NSN: 7510–00–NIB–0789—compatible with Epson Part No. T044320. Magenta
NSN: 7510–00–NIB–0790—compatible with Epson Part No. T044420. Yellow
NSN: 7510–00–NIB–0791—compatible with Epson Stylus Part No. T048120. Black
NSN: 7510–00–NIB–0792—compatible with Epson Part No. T048220. Cyan
NSN: 7510–00–NIB–0793—compatible with Epson Part No. T048320. Magenta
NSN: 7510–00–NIB–0794—compatible with Epson Part No. T048420. Yellow
NSN: 7510–00–NIB–0795—compatible with Epson Part No. T048520. Light Cyan
NSN: 7510–00–NIB–0796—compatible with Epson Part No. T048620. Light Magenta
NPA: Alabama Industries for the Blind, Talladega, AL

Dry Erase, Starter Kit

NSN: 7520–00–NIB–1158—Dry Erase Starter Kit.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX.
Coverage: 100%—A-List—for the total Government requirement as specified by the General Services Administration.
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Street Broom

NSN: 7920–00–NIB–0461—Street Broom.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Coverage: B-List—for the broad Government requirement as specified by the General Services Administration.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Services

Service Type/Location: Custodial Services, David W. Dyer Federal Building & Courthouse, 300 NE First Ave., Miami, FL.
U.S. Courthouse, 301 North Miami Ave., Miami, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: General Services Administration, Public Building Service, Atlanta, GA.

Service Type/Location: Document Destruction, Internal Revenue Service, 208 Sunset Drive, Johnson City, TN.
NPA: Goodwill Industries—Knoxville, Inc., Knoxville, TN.
Contracting Activity: U.S. Department of Treasury, Internal Revenue Service, Chamblee, GA.

Service Type/Location: Grounds Maintenance, San Juan Customhouse, #1 La Puntilla Street, San Juan, PR.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: Department of Homeland Security, U.S. Customs and Border Protection, Indianapolis, IN.
Service Type/Location: Mailing Services (Pharmacy), VISN–19 Eastern Colorado Health Care System (ECHCS), 1055 Clermont Street, Denver, CO.
NPA: Jewish Family Service of Colorado, Denver, CO.

Contracting Activity: VISN–19 Eastern Colorado Health Care System (ECHCS), Glendale, CO.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–15668 Filed 8–9–07; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii 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 of the Hawaii Advisory Committee to the Commission will convene by conference call at 9 a.m. and adjourn at 10 a.m. on August 15, 2007. The purpose of the meeting is to plan for upcoming briefings on the Akaka bill.

This meeting is available to the public through the following toll-free call-in number: 866–365–2984; using the access code: 12423291. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. 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 and access code 12423291.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Angie Trevino of the Western Regional Office at 213–894–3437 by 4 p.m. on August 13, 2007.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by August 30, 2007. The address is 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Barbara de La Viez, Civil Rights Analyst, Eastern Regional Office, U.S. Commission on Civil Rights at (202) 376–7533 [TDY] 202–376–8116], or by e-mail at *bdelaviez@usccr.gov*. Records generated by this meeting may be inspected and reproduced at the Western 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 Western 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. It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, August 3, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 07–3910 Filed 8–9–07; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 070703259–7263–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice to amend all Privacy Act System of Records.

SUMMARY: In accordance with the President's Identity Theft Task Force's Strategic Plan, the Department of Commerce is issuing notice of intent to establish a new routine use to be added to all Privacy Act System of Records. We invite public comment on the proposed new routine use.

DATES: To be considered, written comments must be submitted on or before September 10, 2007. Unless comments are received, the new routine use will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brenda Dolan, Departmental Freedom of Information and Privacy Act Officer, Office of Management and Organization, 202–482–3258.

ADDRESSES: Comments may be mailed to Brenda Dolan, Departmental Freedom of Information and Privacy Act Officer, Office of Management and Organization, Room 5327, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On May 10, 2006 the President established the Identity Theft Task Force by Executive Order 13402 to strengthen Federal efforts to protect against identity theft. This notice establishes a routine use for all Department of Commerce systems of records to permit disclosure to appropriate persons or entities for purposes of response and remedial efforts in the event of a suspected or confirmed breach of the data contained in the systems. This routine use will facilitate an effective response to such breach by allowing for disclosure to those individuals affected by the breach, as well as to others who are in a position to assist the Department's response efforts, either by assisting in notification to affected individuals or otherwise assisting in preventing, minimizing, or remedying harms from any breach. A description of the amendment to the Department's systems of records is provided below.

The Department of Commerce notices as published in the Privacy Act Issuances 2005 Compilation:

COMMERCE/DEPARTMENT–1, Attendance, Leave and Payroll Records of Employees and Certain Other Persons.

COMMERCE/DEPARTMENT–2, Accounts Receivable.

COMMERCE/DEPARTMENT–3, Conflict of Interest Records, Appointed Officials.

COMMERCE/DEPARTMENT–4, Congressional Files.

COMMERCE/DEPARTMENT–5, Freedom of Information and Privacy Requests Records.

COMMERCE/DEPARTMENT–6, Visitor Logs and Permits for Facilities Under Department Control.

COMMERCE/DEPARTMENT–7, Employee Accident Reports.

COMMERCE/DEPARTMENT–8, Employee Applications for Motor Vehicle Operator's Card.

COMMERCE/DEPARTMENT–9, Travel Records (Domestic and Foreign) of Employees and Certain Other Persons.

COMMERCE/DEPARTMENT–10, Executive Correspondence Files.

COMMERCE/DEPARTMENT–11, Candidates for Membership, Members and Former Members of the Department of Commerce Advisory Committees.

COMMERCE/DEPARTMENT–12, Investigative and Inspection Records.

COMMERCE/DEPARTMENT–13, Investigative and Security Records.

COMMERCE/DEPARTMENT–14, Litigation, Claims, and Administrative Proceeding Records.

COMMERCE/DEPARTMENT–15, Private Legislation Claimants-Central Legislative Files.

COMMERCE/DEPARTMENT–16, Property Accountability Files.
COMMERCE/DEPARTMENT–17, Records of Cash Receipts.
COMMERCE/DEPARTMENT–18, Employee Personnel Files Not Covered by Notices of Other Agencies.
COMMERCE/DEPARTMENT–19, Department Mailing Lists.
COMMERCE/DEPARTMENT–20, Biographical Files.
COMMERCE/DEPARTMENT–21, Telephone Call Detail Records.
COMMERCE/DEPARTMENT–22, Small Purchase Records.
CENSUS–2, Employee Productivity Measurement Records.
CENSUS–3, Individual and Household Statistical Surveys and Special Studies Records.
CENSUS–4, Women and Minority-Owned Business Enterprises Survey Records.
CENSUS–5, Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census.
CENSUS–6, Population Census Records for the 1910 and All Subsequent Decennial Censuses.
CENSUS–7, Special Censuses of Population Conducted for State and Local Government.
CENSUS–8, Statistical Administrative Records System.
CENSUS–9, Longitudinal Employer-Household Dynamics System.
ITA–1, Individuals Identified in Export Transactions.
ITA–2, Individuals Involved in International Business Trade Complaints.
ITA–3, Mission Directors/Seminar Chairman/Industry Technical Representatives.
ITA–4, Membership Information: District Export Councils.
ITA–5, National Defense Executive Reserve Personnel Folders.
ITA–6, Foreign Service Officer Evaluations.
ITA–7, Export.gov Community Registration.
IATC–1, Auditor Trainee Registrants.
MBDA–1, Descriptive Data Questionniare.
NBS–1, NBS Guest Workers.
NBS–2, Inventors of Energy-Related Processes and Devices.
NBS–3, Research Associates.
NBS–4, Employees External Radiation Exposure Records.
NBS–5, Nuclear Reactor Operator Licensees File.
NBS–6, Participants in Experiments, Studies, and Surveys.
NBS–7, NBS Emergency Locator System.
NOAA–1, Applicants for the NOAA Corps.
NOAA–2, Commissioned Officers Official Travel Orders Folders.
NOAA–3, Commissioned Officer Official Personnel Folders.
NOAA–4, Commissioned Officers Retired Payroll.
NOAA–5, Fisheries Law Enforcement Case Files.
NOAA–6, Fishermen's Statistical Data.
NOAA–7, Guest Workers at National Geophysical and Solar-Terrestrial Data Center.
NOAA–8, Individuals Engaged in Weather Modification Activities.
NOAA–9, Scientist-Researchers in GATE (Global Atmospheric Research Program Atlantic Tropical Experiment).
NOAA–10, NOAA Diving Program File.
NOAA–11, NOAA Mailing Lists.
NOAA–12, Marine Mammal, Endangered and Threatened Species, Permits, and Exemptions Applications.
NOAA–13, Personnel, Payroll, Travel, and Attendance Records of the Regional Fishery Management Council.
NOAA–14, Dr. Nancy Foster Scholarship Program.
NOAA–15, Alaska Region-North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.
NOAA–16, Crab Economic Data Report for Bering Sea/Aleutian Islands Management Area (BSAI) off the Coast of Alaska.
NOAA–17, Permits and Registrations for Fisheries of the Exclusive Economic Zone (EEZ) off the Coast of Alaska.
NTIS–1, Individuals Interested in NTIS Publications, Shipped Order Addresses, Customer Account Records, and Subscriber Files.
NTIS–2, Employee Daily Time and Productivity Records.
PAT/TM–1, Attorneys and Agents Registered to Practice Before the Office.
PAT/TM–2, Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents.
PAT/TM–3, Employee Production Records.
PAT/TM–4, Government Employees Invention Rights.
PAT/TM–5, Non-Registered Persons Rendering Assistance to Patent Applicants.
PAT/TM–6, Parties Involved in Patent Interference Proceedings.
PAT/TM–7, Patent Application Files.
PAT/TM–8, Patent Application Secrecy Order Files.
PAT/TM–9, Patent Assignment Records.
PAT/TM–10, Patent Deposit Accounts System.
PAT/TM–11, Patent Examiner Testimony Files.
PAT/TM–12, Patent Subscription Service System.
PAT/TM–13, Petitioners for Licenses to File for Foreign Patents.
PAT/TM–14, Users of Public Search Room of the Patent and Trademark Office.
PAT/TM–15, Maintenance of Invention Promoter Complaints.
PAT/TM–16, USPTO PKI Registration and Maintenance System.
WBO–1, Talent and Experience File of Women's Business Experts.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Records in the above listed systems of records may be disclosed as follows:

To appropriate agencies, entities, and persons when (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Dated: August 6, 2007.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. E7–15700 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Safety Voice Over Internet Protocol (VoIP) Roundtable for Organizations Interested in Utilization of VoIP for Communication Between Public Safety Personnel

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public workshop.

SUMMARY: The Office of Law Enforcement Standards (OLES), in

cooperation with the Department of Homeland Security's Office of Interoperability and Compatibility (DHS/OIC) and representatives of the public safety community, will hold a public roundtable on September 11–12, 2007, at the Institute for Telecommunication Sciences (ITS) in Boulder, CO. The purpose of the roundtable is to discuss the development of an implementation profile for VoIP between radio system bridging solutions. The results of this and subsequent roundtable discussions will be used in the development of specific implementation profiles for VoIP usage in public-safety owned systems.

There is no charge for the roundtable; however, because of meeting room restrictions, advance registration is mandatory and limited to three representatives from any one organization. There will be no on-site, same-day registration. The registration deadline is September 4, 2007. Please note registration and admittance instructions and other additional information under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The workshop will be held on September 11–12, 2007, from 8:30 a.m. until 5 p.m. MT.

ADDRESSES: The roundtable will be held in the Radio Building (Building 1), Room 1103/1105, 325 Broadway, Boulder, CO 80305.

FOR FURTHER INFORMATION CONTACT: Dereck Orr, (303) 497–5342, e-mail: *dereck.orr@nist.gov*. The mailing address is 325 Broadway, Building 1, Wing 2, Room 2209, Boulder, CO 80305. Information regarding OLES can be viewed at *http://www.eeel.nist.gov/oles/*. Information regarding DHS/OIC can be viewed at *http://www.safecomprogram.gov*. Information regarding ITS can be viewed at *http://www.its.bldrdoc.gov*.

SUPPLEMENTARY INFORMATION: In response to a request from the U.S. Department of Homeland Security (DHS), Science and Technology Directorate (S&T), Command, Control and Interoperability Division (C2I), Office of Interoperability and Compatibility (OIC), the NIST Office of Law Enforcement Standards (OLES) is developing protocol implementation profiles for VoIP communications between public safety personnel.

The request from OIC germinated from practitioner-raised issues related to VoIP-enabled solutions being marketed to the public safety community as an ''interoperability solution,'' yet these solutions will not interoperate with VoIP-enabled solutions from other manufacturers making the same claim. The proper way to address this situation is to develop a protocol implementation profile (or set of profiles) that contains the minimum standards, parameters and values necessary to ensure that solutions developed by independent organizations will interoperate with each other. This roundtable discussion is intended to lead to the development of a protocol implementation profile for VoIP-enabled radio system bridging solutions.

Anyone wishing to attend this meeting must register by close of business September 4, 2007, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Ms. Kathy Mayeda and she will provide you with logistics information for the meeting. Ms. Mayeda's e-mail address is *kmayeda@its.bldrdoc.gov* and her phone number is (303) 497–5890.

All attendees are required to submit their name, time of arrival, e-mail address and phone number to Ms. Mayeda. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor and address.

Dated: August 6, 2007.

James M. Turner,

Deputy Director.

[FR Doc. E7–15696 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Donald Williams

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of appeal and request for comments.

SUMMARY: This announcement provides notice that Donald Williams has filed an administrative appeal with the Department of Commerce asking that the Secretary override the State of New York's objection to his proposed erosion-control project along the shoreline of Lake Ontario in Niagara County, New York.

DATES: Public and federal agency comments on the appeal are due within 30 days of the publication of this Notice.

ADDRESSES: Comments should be sent to Suzanne Bass, Attorney-Advisor, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Materials from the appeal record will be available at the NOAA Office of the General Counsel for Ocean Services.

FOR FURTHER INFORMATION CONTACT: Suzanne Bass, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–7387.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

Donald Williams filed a notice of appeal with the Secretary of Commerce pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR Part 930, Subpart H. Mr. Williams appeals an objection, filed by the State of New York, to a consistency determination prepared by Mr. Williams related to his proposed erosion project (stone rip-rap) along the shoreline of Lake Ontario, in Niagara County, New York.

In the federal consistency appeal process, the Secretary may override the State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with objective or purposes'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the state's coastal management program. 15 CFR 930.121 (2005), *as amended*, 71 FR 787, 831 (Jan. 5, 2006). To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired were the project not allowed to go forward. 15 CFR 930.121.

II. Public and Federal Agency Comments

Written comments are invited on any of the issues the Secretary must consider in deciding this appeal. Comments must be received within 30 days of the publication of this notice, and may be submitted to Suzanne Bass, Attorney-Advisor, NOAA Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of

Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments will be made available to the Appellant and the State.

III. Appeal Documents

NOAA intends to provide the public with access to all materials and related documents comprising the appeal record during business hours, at the NOAA Office of the General Counsel for Ocean Services.

For additional information about this appeal contact Suzanne Bass, 301–713–7387.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: August 6, 2007.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[FR Doc. 07–3908 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–08–M

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; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area 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, 2007.

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.

Council is supported by three committees: a Research Committee chaired by the Research Representative, an 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 of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawai'i's marine programs and policies.

Authority: 16 U.S.C. sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.)

Dated: August 6, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 07–3914 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB07

Marine Mammals; File No. 782–1719

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 National Marine Mammal Laboratory (NMML), Alaska Fisheries Science Center, (Dr. John L. Bengston, Principal Investigator), 7600 Sand Point Way, NE., Seattle, Washington 98115–6349 has been issued an amendment to scientific research Permit No. 782–1719–04.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s): SEE **SUPPLEMENTARY INFORMATION**

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 7, 2007, notice was published in the **Federal Register** (72 FR 10169) that an amendment to Permit No. 782–1719, issued June 30, 2004 (69 FR 44514), had been requested by the above-named organization. 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.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 782–1719–05 authorizes NMML to take species of cetaceans under NMFS jurisdiction during stock assessment activities throughout U.S. territorial waters and the high seas of the North Pacific Ocean, Southern Ocean, and Arctic Ocean. The permit authorizes Level B harassment during close approach for aerial surveys, vessel-based surveys, observations, and photo-identification and Level A harassment during biopsy sampling and attachment of scientific instruments. This amendment increases the

authorized number of takes for biopsy sampling and tagging of gray whales (*Eschrichtius robustus*) and non-ESA-listed killer whales (*Orcinus orca*) as well as the takes during close approach for aerial and vessel surveys, photo-identification, tagging, and biopsy sampling of non-endangered dwarf sperm whales (*Kogia breviceps*), pantropical spotted dolphin (*Stenella attenuata*), pygmy sperm whales (*Kogia simus*), rough-toothed dolphins (*Steno bredanensis*), Hawaii spinner dolphins (*Stenella longirostris*), striped dolphins (*Stenella coeruleoalba*), and melon-headed whales (*Peponocephala electra*) in the North Pacific Ocean. The amended permit is valid until the permit expires on June 30, 2009.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Documents may be reviewed in the following locations:

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;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Dated: August 3, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15683 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB85

Marine Mammals; File No. 1120–1898

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Eye of the Whale Research (Olga von Ziegesar, Principal Investigator), P.O. Box 15191, Fitz Creek, Alaska, 99603, has been issued a permit to conduct research on humpback whales (Megaptera novaeangliae).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Brandy Hutnak, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 28, 2007, notice was published in the **Federal Register** (72 FR 8972) that a request for a scientific research permit to take humpback whales had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1120–1898, issued to the Eye of the Whale Research, allows for the take of humpback whales in Prince William Sound and adjacent waters of Alaska to determine the population size, distribution, recurrence of individuals, feeding habits, vital rates, associations between animals, and sex of individuals. Researchers may closely approach up to 1,350 whales annually during vessel surveys for photo-identification and behavioral observation.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 3, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15684 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB64

Marine Mammals; File No. 10019

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Jonathon Millman, 268 Mast Road, Durham, New Hampshire 03824, has applied in due form for a permit to conduct commercial/educational photography of harbor (*Phoca vitulina*) and gray (*Halichoerus grypus*) seals.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 10, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10019.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes.

Harbor and gray seals would be filmed on land, from vessel, and underwater within the Isles of Shoals and Casco Bay, Maine. The images collected would be used in a segment for the New Hampshire Public Television educational series ''Windows to the Wild.'' Up to 300 harbor and 50 gray seals may be harassed during filming. Harassment would not exceed Level B and filming would occur on no more than two occasions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 6, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15685 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB11

Taking of Marine Mammals Incidental to Specified Activities; Open Water Seismic Operations in Cook Inlet, Alaska

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

ACTION: Notice; proposed authorizations for two incidental take authorizations; request for comments.

SUMMARY: NMFS has received a request from Union Oil Company of California (UOCC) to change the effective date of its Incidental Harassment Authorization (IHA) covering the period between May 1 and June 15 to between September 4 and November 15, 2007. NMFS has received a request from Marathon Oil Company (MOC) for an authorization to take small numbers of five marine mammal species incidental to seismic operations in portions of Cook Inlet, Alaska. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to modify the effective dates of the IHA which was issued to UOCC, and to issue a new authorization to MOC to incidentally take, by harassment, small numbers of these species between October 1 and November 30, 2007.

DATES: Comments and information must be received no later than September 10, 2007.

ADDRESSES: Comments on the applications and draft Supplemental Environmental Assessment (SEA) should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailboxes address for providing e-mail comments are *PR1.0648–XB11@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. Copies of the applications, the application letters, draft SEA, and other related documents may be obtained by writing to this address or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**). The applications and draft EA are also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 30, 2007, NMFS issued an IHA to UOCC under the authority of Section 101(a)(5)(D) of the MMPA, to take by harassment small numbers of Cook Inlet beluga whales (*Delphinapterus leucas*), Steller sea lions (*Eumetopias jubatus*), Pacific harbor seals (*Phoca vitulina richardsi*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*) incidental to conducting open water seismic operations in northwestern Cook Inlet, Alaska, between May 1 and June 15, 2007 (72 FR 17118, April 6, 2007). However, as a result of ice conditions in the Cook Inlet during spring 2007, UOCC was unable to begin seismic operations planned for May. As a result, on May 17, 2007, UOCC requested that NMFS change the effective date of its IHA to the time period September 4 through November 15, 2007.

On May 15, 2007. MMFS received an application from MOC requesting an IHA for the possible harassment of small numbers of the Cook Inlet beluga whale, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales incidental to conducting open water seismic operations in portions of Cook Inlet, Alaska.

Both proposed operations use an ocean-bottom cable (OBC) system to conduct seismic surveys. OBC seismic surveys are used in waters that are too shallow for the data to be acquired using a marine-streamer vessel and/or too deep to have static ice in the winter. This type of seismic survey requires the use of multiple vessels for cable layout/pickup, recording, shooting, and possibly one or two vessels smaller than those used in streamer operations. The utility boats can be very small, in the range of 10 – 15 m (33 -–49 ft). A detailed description of the open water seismic surveys using OBC system was published in the **Federal Register** on January 5, 2007 (72 FR 536), and is not repeated here.

The proposed operations would be active 24 hours per day, but the airguns would only be active for 1 – 2 hours during each of the 3 – 4 daily slack tide periods. The source for the proposed OBC seismic surveys would be a 900–in^3 BOLT airgun array situated on the source vessel, the *Peregrine Falcon*. The array would be made up of 2 sub-arrays, each with 2, 3–airgun clusters separated by 1.5 m (4.9 ft) off the stern of the vessel. One cluster will consist of 3, 225–in^3 airguns and the second cluster will have 3, 75–in^3 airguns. During seismic operations, the sub-arrays will fire at a rate of every 10 - 25 seconds and focus energy in the downward direction as the vessel travels at 4 – 5 knots (4.6 – 5.8 mph). Source level of the airgun array is 249 dB re 1 microPa at 1 m (0 - peak), and the dominant frequency range is 8 – 40 Hz.

The geographic region for the seismic operation proposed by UOCC remains the same as published in the previous **Federal Register** notice (72 FR 536), which is in the northwestern Cook Inlet, paralleling the shoreline offshore of Granite Point, and extending from shore into the inlet to an average of about 1.6 km (1 mi).

The geographic region for the activity proposed by MOC encompasses a 68.51 km^2 (26.45 square miles) area in lower Cook Inlet on the eastern shore, paralleling the shoreline for about 15.2 km (9.5 mi) and extending from shore into the inlet an average of about 6.1 km (3.8 mi). The approximate boundaries of the region of the proposed project area are 61°09'N, 151°30'W; 61°12'N, 151°34'W; 61°17'N, 151°25'W; and 60°16'N, 151°21'W. There are no major rivers flowing into the open water seismic project area. Water depths range from 0 to 15 m (48 ft), with most of the area less than 7.3 m (24 ft) deep. The proposed seismic operations would begin as early as October 1 and by November 30, 2007.

Description of the Marine Mammals Potentially Affected by the Activity

Marine mammal species potentially occurring within the proposed action area include Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales. Among these species, only the Steller sea lion is listed as endangered under the ESA, and it is also designated as depleted under the MMPA. The Cook Inlet beluga whale is designated as depleted under the MMPA. General information for these species can be found in Angliss and Outlaw (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2006.pdf*. A more detailed description of these species and stocks within Cook Inlet is provided in the January 5, 2007, **Federal Register** (72 FR 536). Therefore, it is not repeated here.

Potential Effects on Marine Mammals and Their Habitat

Seismic surveys using acoustic energy may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). The sound source levels (zero to peak) associated with the OBC seismic survey can be as high as 233 - 240 dB re 1 microPa at 1 m. However, most energy is in the low-frequency spectra below 250 Hz and is directed downward (Richardson *et al.*, 1995), and the short duration of each pulse limits the total energy. Received levels within several kilometers typically exceed 160 dB re 1 microPa (Richardson *et al.*, 1995), depending on water depth, bottom type, ice cover, etc. Although relatively high levels of airgun pulses and frequencies above 500 Hz were detected at certain depth of water column much further away during Sperm Whale Seismic Study's controlled exposure experiments conducted in the Gulf of Mexico (DeRuiter *et al.*, 2006; Madsen *et al.*, 2006), this was probably due to the existence of convergence zones where long-range refraction occurred in a much deep ocean with a critical depth and sufficient depth excess (Urick, 1983; Etter, 2003). Within the proposed project area in Cook Inlet, where average water depth is less than 15 m (50 ft), no convergence zone can exist.

Intense acoustic signals from seismic surveys have been known to cause behavioral alteration such as reduced vocalization rates (Goold, 1996), avoidance (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995; Harris *et al.*, 2001), and changes in blow rates (Richardson *et al.*, 1995) in several marine mammal species.

The proposed surveys would use a 900–in^3 BOLT airgun array consisting of 3, 225–in^3 airguns and 3, 75–in^3 airguns. Acoustic measurements of the airgun array were obtained using calibrated, high-resolution Ocean Bottom Hydrophone recorders in April 2007 in Cook Inlet by JASCO Research Ltd (JASCO). The results show that the nominal ranges to the decibel thresholds 190, 180, and 160 dB re 1 microPa rms, computed using the 90 percent fit equation, are 140, 454, and 3,027 m (or 459, 1,490, and 9,931 ft), respectively (Collins *et al.*, 2007).

The seismic surveys would only introduce acoustic energy into the water column and no objects would be released into the environment. The survey vessels would travel at a speed of 4 5 knots and the two projects would be conducted in a small area of Cook Inlet for a short period.

There is a relative lack of knowledge about the potential impacts of seismic energy on marine fish and invertebrates. Available data suggest that there may be physical impacts on eggs and on larval, juvenile, and adult stages of fish at very close range (within meters) to seismic energy source. Considering typical source levels associated with seismic arrays, close proximity to the source would result in exposure to very high energy levels. Where eggs and larval stages are not able to escape such

exposures, juvenile and adult fish most likely would avoid them. In the cases of eggs and larvae, it is likely that the numbers adversely affected by such exposure would be very small in relation to natural mortality. Studies on fish confined in cages that were exposed under intense sound for extended period showed physical or physiological impacts (Scholik and Yan, 2001; 2002; McCauley *et al.*, 2003; Smith *et al.*, 2004). While limited data on seismic surveys regarding physiological effects on fish indicate that impacts are short-term and are most apparent after exposure at very close range (McCauley *et al.*, 2000a; 2000b; Dalen *et al.*, 1996), other studies have demonstrated that seismic guns had little effect on the day-to-day behavior of marine fish and invertebrates (Knudsen *et al.*, 1992; Wardle *et al.*, 2001). It is more likely that fish will swim away upon hearing the approaching seismic impulses (Engas *et al.*, 1996). Based on the foregoing, NMFS finds preliminarily that the proposed seismic surveys would not cause any permanent impact on the physical habitats and marine mammal prey species in the proposed project area.

Number of Marine Mammals Expected to Be Taken

NMFS estimates that approximately 37 Cook Inlet beluga whales out of a population of 302 whales could be harassed incidentally by the two proposed seismic operations from September to November, 2007. This represents 12.1 percent of Cook Inlet beluga whales that could be taken by Level B harassment if no mitigation and monitoring measures are implemented. This number is based on the animal density, length of track planned, and the assumption that all animals will be harassed at distances where noise at received level is at and above 160 dB re 1 microPa rms. Beluga whale density (0.03 whale/km2) was calculated by dividing the population (302) by 50 percent of the surface area of Cook Inlet (19,863 km^2, or 7,672 mi^2), assuming their distribution is only limited to the upper portion of the Inlet (Hobbs *et al.*, 2005). The number of beluga whales that could be taken by both proposed seismic projects is calculated by multiplying the whale density by the total length of the track lines (57 km or 35.4 mi for UOCC and 146 km or 90.7 mi for MOC) and by twice of the 160 dB isopleths range (3.0 km). This estimate is conservative as it assumes that all animals exposed to seismic impulses over 160 dB re 1 microPa would be harassed and disturbed. As the majority of acoustic energy of low frequency airgun impulses falls outside the beluga whale's most sensitive hearing range (Richardson *et al.*, 1995), it is most likely that only a portion of whales within the 160 dB re 1 microPa isopleth would be disturbed. In addition, it is also possible that many of the animals would be habituated to this level of acoustic disturbances. Furthermore, mitigation measures, including the ramp-up requirement during the initiation of the seismic operations (see below) could eliminate most, if not all, startling behavior from animals near the proposed project area. Therefore, NMFS believes that the actual number of Level B harassment takes of Cook Inlet beluga whale would be much lower than the estimated 37 whales.

There are no similar population surveys for harbor seals, harbor porpoises, Steller sea lions, and killer whales conducted within the proposed project area. However, based on an abundance survey of harbor porpoises within the entire Cook Inlet (Dahlheim *et al.*, 2000), it is estimated that the population density of harbor porpoise in the entire Inlet is 0.0072 animal per km^2. Based on this density data, NMFS estimates that about 9 harbor porpoises out of a population of 30,506 porpoises could be harassed incidentally by the two proposed seismic operations from September to November, 2007. This number of take represents less than 0.03 percent of harbor porpoises that could be taken by Level B harassment.

Average counts were used to estimate take instead of density for harbor seals, since count data were available (Boveng *et al.*, 2005a; 2005b) but not density data. Although no seals were counted in the vicinity of the proposed project areas, it is likely a small number of seals transit through the project areas in the fall. In order to account for seal occurrence in the proposed project areas, the count (1 - 10) at the location (Anchor Point) nearest to the MOC project area was used as the basis for calculating take. This count was quadrupled to account for seals in the water for both proposed project areas, since the conservative estimate of take, which is more likely high than low. Therefore, the estimated take of the Gulf of Alaska stock of harbor seals is 40 seals, which represent approximately 0.14 percent of the total population (29,175, Angliss and Outlaw, 2007).

There are no density estimates available for Steller sea lions and killer whales with in Cook Inlet. However, their appearance in Upper Cook Inlet is rare and none of these species were sighted in the upper Inlet during the 2004 survey (Rugh *et al.*, 2005). Therefore, NMFS concludes that the harassment, if at all, of these species is reasonably believed to be much lower than those of beluga whales and harbor seals.

Effects on Subsistence Needs

Tyonek, which is predominately a Dena'ina Athabaskan community, is approximately 6.4 km (4 mi) east of the eastern boundary of the proposed UOCC project area, and is about 100 km (62 mi) north of the proposed MOC project area. While it is the only village that hunts beluga whales, Alaska natives unaffiliated with a Cook Inlet community who have moved to the region and visited the region also have historically harvested beluga whales in the Inlet (Mahoney and Shelden, 2000). The role of marine mammals in the subsistence economy of Tyonek and other Alaska natives has been diminished by the almost complete elimination of the harvest of Cook Inlet beluga whales because of their greatly reduced stock size. In recent years, Tyonek natives harvested one beluga whale per year and occasionally harbor seals (Huntington, 2000), but their primary source of red meat is moose (Foster, 1982). Salmon and other fish also contribute substantially to their subsistence diet (Foster, 1982). The Tyonek village recently announced (April 16, 2007) that they would not harvest any belugas in 2007 due to the status of the population.

In addition, these areas are not important subsistence areas for subsistence species of marine mammals (harbor seals). Tyonek native subsistence activities have become focused closer to the village as more non-natives utilize and occupied traditional subsistence areas combined with harvest regulation restrictions, changes in the abundance and distribution of subsistence resources, and other factors.

Mitigation

The following mitigation measures are proposed under the proposed IHAs that would be issued to UOCC and MOC for conducting seismic operations in Cook Inlet. NMFS believes that the implementation of these mitigation measures would: (1) result in the least practicable impact on marine mammal species or stocks and their habitat; and (2) ensure that no unmitigable adverse impacts on the availability of marine mammals species or stocks for subsistence harvest would result.

Time and Frequency

Seismic operations would be limited from early September to late November in small portions of Cook Inlet. During

the seismic operations, airguns would only be active for 1 – 2 hours during each of the 3 – 4 slack tide periods, with the vessel moving at a speed of 4 – 5 knots (4.6 – 5.8 mph).

Establishment of Safety Zones

The applicants would establish a 454–m (1,490–ft) radius safety zone for cetaceans and a 140–m (459–ft) radius safety zone for pinnipeds for the seismic operations. These safety zone radii are based on empirical measurements conducted by JASCO on the same airgun array operated in Cook Inlet, where the received sound pressure levels (SPL) attenuated to 180 dB and 190 dB re 1 microPa rms, respectively.

Safety zones would be surveyed and monitored prior to, during, and after the airgun seismic operations. A detailed description of marine mammal monitoring is described in the Monitoring and Reporting section below.

Speed and Course Alteration

If a marine mammal is detected outside the safety radius and based on its position and the relative course of travel is likely to enter the safety zone, the vessel's speed and/or direct course may, when practicable and safe, be changed to avoid the impacts to the animal. The marine mammal activities and movements relative to the seismic and support vessels must be closely monitored to ensure that the animal does not (1) approach the safety radius, or (2) enter the safety zone. If either of these scenarios occur, further mitigation measures must be taken (i.e., either further course alterations or power down or shut down of the airgun(s)).

Power-down Procedures

A power down involves decreasing the number of airguns in use so that the radius of the 180- or 190–dB zone is decreased to the extent that marine mammals are not in the safety zone. During a power-down, one airgun is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic guns in the area.

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns must be powered down before the animal is within the safety zone.

Shut-down Procedures

A shut-down occurs when all airgun activity is suspended. The operating airgun(s) must be shut down if a marine mammal approaches the applicable safety zone and a power down still would not likely to keep the animal outside the newly adjusted smaller safety zone. The operating airgun(s) must also be shut down completely if a marine mammal is found within the safety zone during the seismic operations. The shut-down procedure should be accomplished within several seconds (of a ''one shot'' period) of the determination that a marine mammal is within or about to enter the safety zone.

Following a shut-down, airgun activity would not resume until the marine mammal has cleared the safety zone. The animal would be considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the safety zone for 30 minutes.

Ramp-up Procedures

Although marine mammals will be protected from Level A harassment by establishment of a safety zone at a SPL levels of 180 and 190 dB re 1 microPa rms for cetaceans and pinnipeds, respectively, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, and to further reduce Level B harassment by startling marine mammals with a sudden intensive sound, UOCC and MOC propose to implement ''ramp-up'' practice when starting up airgun arrays. Ramp-up would begin with the smallest airgun in the array that is being used for all subsets of the 6–gun array. Airguns would be added in a sequence such that the source level in the array would increase at a rate no greater than 6 dB per 5 minutes. During the ramp-up, the safety zone for the full 6–airgun system would be maintained.

Night-time Operations

During night-time operations when the safety zone cannot be visually inspected, a single airgun will operate by firing every one minute whenever regular acquisition airgun operations are not occurring to keep marine mammals at a safe distance. If, during these non-recording times, this airgun is inactive for more than 30 minutes, operations will cease and all airguns will be shut down until the safety zone can be visually inspected and monitored for the absence of marine mammals.

Monitoring

Vessel-based Monitoring

Vessel based monitoring would be conducted by at least two qualified NMFS-approved MMOs. Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) would be standard equipment for the monitors.

Vessel-based MMOs would begin marine mammals monitoring at least 30 minutes prior to the planned start of airgun operations and during all periods of airgun operations. MMOs would survey the safety zone to ensure that no marine mammals are seen within the zone before a seismic survey begins. If marine mammals are found within the safety zone, seismic operations would be suspended until the marine mammal leaves the area. If a marine mammal is seen above the water and then dives below, the operator would wait 30 minutes, and if no marine mammals are seen by the MMOs in that time it will be assumed that the animal has moved beyond the safety zone. Observations would also be conducted during all ramp-up procedures to ensure the effectiveness of ramp-up as a mitigation measure. When feasible, observations would also be made during transits, moving cable, and other operations when airguns are inactive.

Data for each distinct marine mammal species observed in the proposed project area during the period of the seismic operations would be collected. Numbers of marine mammals observed, species identification if possible, frequency of observation, the time corresponding to the daily tidal cycle, and any behavioral changes due to the airgun operations will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry would be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures would allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations would provide: (1) Basis for real-time mitigation (airgun shut-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to

compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Aerial Monitoring

In addition to vessel monitoring, seismic surveys that would be conducted off Granite Point between September and November by UOCC would also be required to conduct aerial monitoring, due to the relative more frequent use by beluga whales in the area (Hobbs *et al.*, 2005). The aerial surveys would: (1) collect and report data on the distribution, numbers, movement and behavior of marine mammals near the seismic operations on the westside of Cook Inlet between Tyonek and Trading Bay, with special emphasis on beluga whales; (2) advise operating vessels as to the presence of marine mammals in the general area of operation; and (3) support regulatory reporting related to the estimation of impacts of seismic operations on marine mammals.

The aerial monitoring area will be centered on the project area plus a buffer for detecting belugas before or after they pass through the project area. The boundary for the aerial survey extends approximately 4 mi (6.4 km) east and west of the project area, between Tyonek and Trading Bay (directly east of the Trading Bay State Game Refuge boundary), and 0.25 mi (0.4 mi) from the water's edge, which will vary depending on tide levels. The size of the survey area provides a design for observing whales before and during exposure to seismic sounds.

Aerial monitoring will be conducted from a single engine helicopter, which will fly a single transect line paralleling the shoreline along the coast in the project area. The aerial survey will begin from the northeast end and finish at the southwest end of the transect. This pattern will be flown unless observation conditions (glare, etc) require flying from southwest to northeast depending on the effect of glare on observations. The helicopter operations will be based out of Beluga or Shirleyville. The helicopter will fly at 1,500 ft (457 m), due to glide path needs, and at a ground speed of 60 knot (111 km/h). This altitude should prevent disturbance of marine mammals and birds by the helicopter noise.

Helicopter monitoring will be conducted at a frequency that reflects the monthly occurrence of belugas in the project area (LGL, 2006). The helicopter will be flown once per week from the time the seismic operations begin until the project is completed. However, if beluga whales are observed by helicopter or boat in or near the project area, survey flights will be conducted daily until whales are not observed for two consecutive days. Once belugas are no longer observed for two consecutive days, surveys will again be flown once per week until the project ends.

Aerial monitoring will fly 1 - 2 times shortly before and one half of the survey transect will be flown once during seismic operations, whenever possible, in a given day. Half transects are limited in duration to prevent noise interference with seismic data acquisition. Half transect flight directions will be determined by the relative position of activities to the helicopter landing location.

To the extent consistent with applicable aviation regulation, aerial surveys will be conducted under the following conditions: (1) when the pilot considers it safe to do so; (2) during daylight hours; (3) during good viewing conditions (ceiling height above 1,500 ft (457 M) and Beaufort Sea States below 4; and (4) during periods allowed by regulatory agencies. Flights will also be oriented to minimize sun glare on the observer.

One NMFS-approved MMO will be on the helicopter observing and recording marine mammals, covering the 180o view in front of the helicopter. Space will be made available on the helicopter for NMFS staff to participate in surveys when possible.

Data from aerial monitoring will be recorded on the species, number, group size, location (latitude/longitude), time, date, direction and angle from helicopter as determined by using a clinometer. Data will also be collected on tide, real time positions (latitude/longitude) of seismic survey vessel, shooting, and vessel activities. Observation conditions will be recorded at the start and finish of each survey or whenever conditions change. Data will be recorded on ceiling height, Beaufort Force, glare, and weather (snow, fog, etc.). All information collected during the marine mammal survey and/or reported to the vessel will be recorded on a field form. The information will be included with real time data on seismic activity (boat location, shooting, activities).

Reporting

Reports from aerial and land-based monitoring would be faxed or e-mailed to NMFS Anchorage Field Office on a daily basis.

Reports from UOCC and MOC would be submitted to NMFS within 90 days after the end of the respective projects. The reports would describe the operations that were conducted, the marine mammals that were detected near the operations, and provide full documentation of methods, results, and interpretation pertaining to all monitoring. The reports would also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

National Environmental Policy Act (NEPA)

In March 2007, NMFS prepared a final EA on the issuance of IHAs to ConocoPhillips Alaska, Inc and UOCC to take marine mammals by harassment incidental to conducting seismic operations in upper Cook Inlet, Alaska. A Finding of No Significant Impact statement was issued on March 30, 2007. The proposed seismic operations in this document are similar to those covered in the March 2007 Final EA, with the only exception of project time frames, location, and the levels of estimated marine mammal takes. Therefore, NMFS has prepared a draft Supplemental EA which incorporates by reference the March 2007 Final EA, providing an analysis of project time frames, location, and potential environmental impacts.

Endangered Species Act (ESA)

An informal consultation on the ESA was conducted for the proposed issuance of UOCC and MOC's IHAs. As a result of informal consultation, NMFS Anchorage Field Office has determined that the proposed seismic activities are not likely to adversely affect listed species or critical habitat.

Preliminary Determinations

NMFS has determined preliminarily that small numbers of beluga whales and harbor porpoises may be taken incidental to seismic surveys, by no more than Level B harassment and that such taking would result in no more than a negligible impact on such species or stocks. In addition, NMFS has determined preliminarily that Pacific harbor seals, Steller sea lions, and killer whales, if present within the vicinity of the proposed activities could be taken incidentally, buy by no more than Level B harassment and that such taking would result in no more than a negligible impact on such species or stocks. At this time, NMFS is not able to determine whether any potential take would involve small numbers of Pacific harbor seals, Steller sea lions, or killer

whales due to data limitations and our inability to develop density estimates. Regardless, given the infrequent occurrence of these species (or none at all), NMFS believes that any take would be significantly lower than those of beluga whales.

While behavioral modifications, including temporarily vacating the area during the project period may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless finds that this action would result in no more than a negligible impact on these marine mammal species and/or stocks. NMFS also finds that the proposed action will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

In addition, no take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to modify the UOCC IHA to allow its seismic operations in Upper Cook Inlet between September and November, 2007, and to issue an IHA to MOC for the potential harassment of Cook Inlet beluga whales, Pacific harbor seals, harbor porpoises, Steller sea lions, and killer whales incidental to conducting seismic operations in Cook Inlet in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 7, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15688 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN XB91

North Pacific Fishery Management Council; Notice of Public Meeting

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

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council (Council) Salmon Bycatch Workgroup will meet August 29, 2007, in Anchorage, Alaska at the Hawthorn Suites, 1110 West 8th Avenue, Anchorage Alaska.

DATES: Meeting of the North Pacific Fishery Management Council's Salmon Bycatch Workgroup on August 29, 2007, from 9 a.m. to 5 p.m.

ADDRESSES: Hawthorn Suites, 1110 West 8th Avenue, Anchorage Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Review revised alternatives per Salmon Work Group recommendations (June 2007), preliminary work on hard cap estimation and trigger cap numbers by season and annual totals, spatial evaluation of candidate closures I (A and B season), evaluation of closures and salmon hot spots using observed salmon numbers and salmon bycatch rates, evaluation of candidate closures using a proposed optimization technique and Workgroup Discussion and recommendations for Council consideration.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: August 7, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–15620 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, August 29, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Financial Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, 202–418–5100.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–3935 Filed 8–8–07; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Voucher and Payment Request Form. Copies of the information collection requests can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 9, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Service Trust; Attention Bruce Kellogg, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3484, Attention Bruce Kellogg.

(4) Electronically through the Corporation's e-mail address system: *bkellogg@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by e-mail at *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

This form or its electronic equivalent is used by AmeriCorps members to request a payment from their education award accounts, by schools and lenders to verify eligibility for the payments, and by both parties to verify certain legal requirements.

Current Action

The Corporation seeks to renew and revise the current form. The revisions include minor format and textual changes to enhance clarity and ease of use. The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 31, 2007.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Voucher and Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: Individuals who have completed a term of national service who wish to access their education award accounts.

Total Respondents: 45,000 responses annually, using the paper form.

Frequency: Some members may not ever use the education award and others use it several times a year. Currently, about half of the education award payments are processed electronically. The Corporation expects the use of paper forms to decrease over the next few years.

Average Time Per Response: Total of 5 minutes (one half minute for the AmeriCorps member's section and 4½ minutes for the school or lender).

Estimated Total Burden Hours: 3,750 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 6, 2007.

Cynthia Wooten,

Manager, National Service Trust.

[FR Doc. E7–15583 Filed 8–9–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012]

Federal Acquisition Regulation; Submission for OMB Review; Termination Settlement Proposal Forms (Standard Forms 1435 Through 1440)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning termination settlement proposal forms (Standard Forms 1435 through 1440). A request for public comments was published in the **Federal Register** at 72 FR 19188, on April 17, 2007. No comments were received. This OMB clearance expires on August 31, 2007.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 10, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Respondents: 872.

Responses Per Respondent: 2.4.

Total Responses: 2,092.

Hours Per Response: 2.4.

Total Burden Hours: 5,023.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms (Standard Forms 1435 through 1440), in all correspondence.

Dated: August 3, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–3917 Filed 8–9–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Open meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on September 21, 2007, from 8 a.m. to 5 p.m. The meeting will be held at the DoDEA headquarters building, 4040 North Fairfax Drive, Arlington, Virginia 22306. The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be the current operational qualities of schools and the institutionalized school improvement processes, as well as other educational matters. For further information contact Mr. Jim Jarrard at 703–588–3121, or at *James.Jarrard@hq.dodea.edu.*

Dated: August 6, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–3909 Filed 8–9–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Record of Decision (ROD) for Base Closure and Realignment (BRAC) Actions at Fort Belvoir, VA

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces the availability of a ROD which summarizes the decision for implementing realignment actions as directed by the BRAC Commission at Fort Belvoir, Virginia. The decision places 8,500 new employees at Fort Belvoir's Engineer Proving Ground; places 5,500 personnel on Fort Belvoir's Main Post, and defers a decision on 6,200 personnel.

ADDRESSES: To obtain a copy of the ROD please contact the Fort Belvoir Directorate of Public Works, 9430 Jackson Loop, Suite 100, Fort Belvoir, Virginia 22060–5116; e-mail address: *environmental-fb-dpw@conus.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Don Carr, Fort Belvoir Public Affairs Office, at (703) 805–2583 during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The Army has decided to implement the Preferred Alternative (with exceptions noted below) identified in the Environmental Impact Statement (EIS) (June 2007), supporting studies, and comments provided during formal comment and review periods. The Preferred Alternative includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions and activities at Fort Belvoir as mandated by the BRAC Commission's recommendations. The preferred alternative also includes an updated land use plan, a portion of the installation's Real Property Master Plan. To implement the BRAC Commission recommendations, Fort Belvoir will be receiving personnel, equipment, and missions from various closure and realignment actions within the Department of Defense. To implement the BRAC Commission recommendations, the Army will provide the necessary facilities, buildings, and infrastructure to accommodate personnel being realigned from the Washington Headquarters Services (WHS); National Geospatial-Intelligence Agency (NGA); various Army entities moving from leased space in the National Capital Region (NCR); U.S. Army Medical Command (MEDCOM); Program Executive Office, Enterprise Information Systems (PEO EIS); and Missile Defense Agency Headquarters Command Center (MDA HQCC). Details of the BRAC Commission's recommendations can be found at *http://www.brac.gov.* The No Action Alternative would not meet the Army's purpose and need for the Proposed Action as the BRAC realignment is required by Congress and needed for Army transformation to be effective.

Two elements of the EIS's Preferred Alternative were not selected for implementation in the ROD. First, no decision is being made at this time for siting of the WHS group, designated for the Engineer Proving Ground in the EIS. There will be a subsequent decision for this organization, following analysis of different alternatives. The ROD also does not include building of the Family Travel Camp on Fort Belvoir's Main Post.

Special consideration was given to the effect of the Preferred Alternative on natural resources, cultural resources, traffic and transportation, socioeconomic resources, and air quality. Many means to avoid or minimize environmental harm from the selected alternative have been adopted. Other mitigation measures identified in the EIS were not adopted, primarily because of a lack of funding. The Army will minimize effects on all environmental and socioeconomic resources by implementing the best management practices described in the EIS.

As determined in the EIS, implementing the Preferred Alternative will have short- and long-term significant adverse impacts on the transportation network at Fort Belvoir and its surrounding area. The ROD states that implementing the Preferred Alternative reflects a proper balance among initiatives for protection of the environment, appropriate mitigation, and actions to achieve the Army's requirements.

An electronic version of the ROD can be viewed or downloaded from the following Web site: *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

Dated: August 7, 2007.

H.E. Wolfe,

Principal Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. 07–3911 Filed 8–9–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision (ROD) for Transformation at the Pinon Canyon Maneuver Site (PCMS), Colorado

AGENCY: Department of the Army.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces the availability of a ROD documenting and explaining the decision to implement realignment transformation actions, as directed by the Base Realignment and Closure (BRAC) Commission, at the Pinon

Canyon Maneuver Site (PCMS) in Las Animas County in southeastern Colorado, and other Army transformation programs. The decision is based on the analysis described in the Final PCMS Transformation Environmental Impact Statement (EIS), supporting studies, and comments provided during formal comment and review periods.

FOR FURTHER INFORMATION CONTACT: PCMS National Environmental Policy Act (NEPA) Coordinator, Directorate of Environmental Compliance and Management, 1638 Elwell Street, Building 6236, Fort Carson, Colorado 80913–4000; telephone: 719–526–0912; fax: 719–526–1705; or e-mail: *carsdecampcmsnepa@conus.army.mil.*

SUPPLEMENTARY INFORMATION: The Army has decided to proceed with implementing the Proposed Action described in the Final EIS. The Proposed Action is the Army's preferred alternative to implement three transformation programs at the PCMS. The Army transformation programs include: BRAC 2005; Global Defense Posture Realignment (formerly known as Integrated Global Presence and Basing Strategy); and the Army Modular Force initiative. These programs are part of the overall Army restructuring and are needed to prepare the Army's combat forces for deployment around the world. The Army's decision considered and is consistent with the analysis presented in the EIS, supporting studies, and comments provided during formal comment and review periods.

To implement the BRAC Commission recommendations, the Proposed Action includes two primary components: (1) More frequent use of the PCMS training areas to provide training for approximately 8,500 realigned Active Component (AC) Soldiers and additional Reserve Component (RC) Soldiers assigned to, or otherwise under the control of, Fort Carson and (2) construction of facilities in the Cantonment and ranges in the training areas.

The Proposed Action will provide for increased frequency of training for existing and new units stations at, or otherwise assigned to, Fort Carson. Training and maneuver activities would be similar to the types of activities that presently occur on the PCMS. The increased training requirements of additional AC and RC units, however, will result in increased frequency of use of the training areas. The Army will continue to implement land and environmental management programs and practices to sustain its training lands for continued use. The No Action Alternative would not meet the Army's purpose and need for the Proposed Action because the BRAC realignment is required by Congress and needed for Army transformation to be effective.

All practicable means to avoid or minimize environmental impacts as a result of implementing the selected action have been adopted. The Army will minimize effects on all environmental and cultural resources by implementing the best management practices and mitigation measures described in the ROD to minimize or avoid the adverse effects identified in the Final EIS.

The Army's decision reflects a proper balance among initiatives for protection of the environment, appropriate mitigation, and actions to achieve the Army's requirements.

The decision does not include expansion of the PCMS through land acquisition. Expansion of the PCMS is a separate action that will be evaluated in a public process at a future date.

An electronic version of the ROD can be viewed or downloaded online at *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

Dated: August 5, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 07–3912 Filed 8–09–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision (ROD) for Transformation at Fort Carson, CO

AGENCY: Department of the Army.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces the availability of a ROD documenting and explaining the decision to implement realignment actions, as directed by the Base Realignment and Closure (BRAC) Commission, and other Army transformation programs, at the Fort Carson military installation near Colorado Springs, Colorado. The decision is based on the analysis described in the Final Fort Carson Transformation Environmental Impact Statement (EIS), supporting studies, and comments provided during formal comment and review periods.

FOR FURTHER INFORMATION CONTACT: Fort Carson National Environmental Policy Act (NEPA) Coordinator, Directorate of Environmental Compliance and Management, 1638 Elwell Street, Building 6236, Fort Carson, Colorado 80913–4000; telephone: 719–526–4666; fax: 719–526–1705; or e-mail *carsde camnepa@conus.army.mil.*

SUPPLEMENTARY INFORMATION: The Army has decided to proceed with implementing the Proposed Action described in the Final EIS. The Proposed Action is the Army's preferred alternative to implement three transformation programs at Fort Carson. The Army transformation programs include: BRAC 2005; Global Defense Posture Realignment (formerly known as Intergrated Global Presence and Basing Strategy); and the Army Modular Force initiative. These programs are part of the overall Army restructuring and are needed to prepare the Army's combat forces for deployment around the world. The Army's decision considered, and is consistent with, the analysis presented in the EIS, supporting studies, and comments provided during formal comment and review periods.

To implement transformation programs, the Proposed Action includes three primary components: (1) Changes in force structure resulting in a net gain of military units and personnel; (2) facility construction, renovation, and demolition; and (3) increased frequency of live-fire and maneuver training. The only alternative to the Proposed Action that was evaluated in the Final EIS, the No Action alternative, is not feasible because restationing has been directed by BRAC 2005.

All practicable means have been adopted to avoid adverse impacts on environmental and cultural resources identified in the Final EIS as a result of implementing the selected action. To the extent that such impacts cannot be avoided altogether, the Army will minimize them by implementing the best management practices and mitigation measures described in ROD.

The Army's decision reflects a proper balance among initiatives for protection of the environment, appropriate mitigation, and actions to achieve the Army's requirements.

Copies of the ROD can be requested from the NEPA Coordinator or downloaded at *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

Dated: August 5, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health.

[FR Doc. 07–3913 Filed 8–9–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 6, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Student Aid Internet Gateway (SAIG) Enrollment Document.

Frequency: Reporting, Annually.

Affected Public:

Not-for-profit institutions (primary).

Businesses or other for-profit.

State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 9,332.

Burden Hours: 6,221.

Abstract: Enrollment in SAIG allows eligible entities to exchange Title IV information electronically with the Department of Education. Users are able to receive, transmit, view and update student financial aid data via SAIG. Eligible respondents include postsecondary schools that participate in Federal student financial aid programs, financial aid servicers, State and guaranty agencies, lenders, and need analysis servicers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3423. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–15706 Filed 8–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–139–003]

Algonquin Gas Transmission, LLC.; Notice of Errata to Compliance Filing

August 6, 2007.

Take notice that on July 31, 2007, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 2nd Sub Second Revised Sheet No. 513, to become effective on July 19, 2007.

Algonquin states that this substitute revised tariff sheet is being filed to correct an error in the corresponding tariff sheet that was submitted on July 27, 2007 in compliance with a July 19, 2007 order in the captioned docket.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15647 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–553–000, Docket No. RP07–548–000, Docket No. RP07–549–000, Docket No. RP07–551–000, Docket No. RP07–550–000]

Algonquin Gas Transmission, LLC, East Tennessee Natural Gas, LLC., Egan Hub Storage, LLC, Maritimes & Northeast Pipeline, L.L.C., Texas Eastern Transmission, LP; Notice of Proposed Changes In FERC Gas Tariff

August 6, 2007.

Take notice that the above-referenced pipelines tendered for filing their tariff sheets respectively, to become effective September 1, 2007.

The above-referenced pipelines states that the purpose of their filings is to: (1) Modify section 32 of the general terms and conditions (GT&C) to their tariffs and to further streamline and improve the procedures for obtaining access to the LINK® System; (2) make minor modifications to the Form of Service Agreements for the LINK® System (LINK® System Agreement); and (3) modify GT&C Section 32.1(a) and the LINK® System Agreement to reflect the addition of Saltville Gas Storage Company L.L.C. as a party to the agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15652 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–557–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 6, 2007.

Take notice that on August 2, 2007, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective September 1, 2007.

Algonquin states that the purpose of this filing is to modify the Algonquin Tariff to (i) Update the nomination, scheduling and curtailment provisions in the General Terms and Conditions, (ii) clarify Customers' rights to segment capacity on the Algonquin system, and (iii) correct a typographical error.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15654 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–439–001]

ANR Pipeline Company; Notice of Compliance Filing

August 6, 2007.

Take notice that on August 1, 2007, ANR Pipeline Company (ANR) tendered for filing supplemental statement concerning the source of the gas reported as sold on ANR's most recent Operational Purchase and Sales Report, filed May 1, 2007.

ANR states that the filing is being made in response to an informal request by the Commission Staff for information in the above proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15648 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–15–000]

Cobra Pipeline Company, Ltd.; Notice of Petition for Rate Approval

August 3, 2007.

Take notice that on July 20, 2007, Cobra Pipeline Company, Ltd., an Ohio Hinshaw pipeline company, filed a rate election and operating conditions required by 18 CFR 284.123(e) for a blanket certificate authorizing the transportation and sale of natural gas under Subparts C and D of part 284 of the Commission's regulations.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time August 17, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15630 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–546–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2007.

Take notice that on August 1, 2007, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective September 1, 2007.

Second Revised Sheet No. 111
Second Revised Sheet No. 112
Second Revised Sheet No. 162
Third Revised Sheet No. 179
Second Revised Sheet No. 180

Dauphin Island states that these tariff sheets are being filed to more accurately reflect current operations.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15632 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–99–001]

Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission Complainant v. Entergy Services, Inc., Entergy Operating Companies Respondent; Notice of Filing

August 6, 2007.

Take notice that on July 26, 2007, Entergy Services, Inc., as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc. filed a refund report in compliance with the Federal Energy Regulatory Commission's Order issued on June 11, 2007, *Mississippi Delta Energy Agency and Clarksdale Public Utilities* v. *Entergy Services, Inc., and Entergy Operating Companies,* 119 FERC ¶ 61,269 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15639 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–038]

Kinder Morgan Interstate Gas Transmission, LLC.; Notice of Compliance Filing

August 6, 2007.

Take notice that on August 2, 2007 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Thirteenth Revised Sheet No. 4G.01 and Ninth Revised Sheet No. 4K, to be effective August 3, 2007.

KMIGT states that the tariff sheets are being filed in compliance with the Commission's December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15637 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–036]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

August 6, 2007.

Take notice that on July 31, 2007 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Twelfth Revised Sheet No. 4G.01 and Eighth Revised Sheet No. 4K to be effective August 1, 2007.

KMIGT states that the tariff sheets are being filed in compliance with the Commission's December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15657 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–037]

Kinder Morgan Interstate Gas Transmission, LLC.; Notice of Compliance Filing

August 6, 2007.

Take notice that on August 1, 2007 Kinder Morgan Interstate Gas Transmission, LLC. (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Thirteenth Revised Sheet No. 4G.01 and Tenth Revised Sheet No. 4L, to be effective July 31, 2007.

KMIGT states that the above-referenced tariff sheets reflect an amendment to a previously approved negotiated rate contract effective July 31, 2007. The tariff sheets are being filed pursuant to Section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–B, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15658 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–558–000]

Maritimes & Northeast Pipeline, LLC.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 2007.

Take notice that on August 2, 2007, Maritimes & Northeast Pipeline, LLC. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective September 1, 2007.

Maritimes states that the purpose of this filing is to modify the Maritimes Tariff to: (i) Update the nomination, scheduling, curtailment and OFO provisions in the general terms and conditions, and (ii) make certain minor, non-substantive revisions.

Maritimes states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15655 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–540–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 6, 2007.

Take notice that on July 31, 2007, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, 104th Revised Sheet No. 9, to become effective August 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15650 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2085–000]

Northern Iowa Windpower II, LLC; Notice of Issuance of Order

August 6, 2007.

Northern Iowa Windpower II, LLC (Northern Iowa) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Northern Iowa also requested waivers of various Commission regulations. In particular, Northern Iowa requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Northern Iowa.

On August 1, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—Central, granted the request for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Northern Iowa, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 5, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Northern Iowa is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Northern Iowa, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Northern Iowa's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15641 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2085–000]

Northern Iowa Windpower II, LLC; Notice of Issuance of Order

August 6, 2007.

Northern Iowa Windpower II, LLC (Northern Iowa) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Northern Iowa also requested waivers of various Commission regulations. In particular, Northern Iowa requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Northern Iowa.

On August 1, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates-Central, granted the request for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Northern Iowa, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 5, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Northern Iowa is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Northern Iowa, compatible with the public interest, and is reasonably

necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Northern Iowa's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15642 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–539–000]

Northern Natural Gas Company; Notice of Limited Waiver of Tariff Provisions

August 3, 2007.

Take notice that on July 31, 2007, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Northern Natural Gas Company (Northern) tendered for filing a petition for a limited waiver of its FERC Gas Tariff in order to allow Northern to resolve period imbalances with Adams Resources Marketing, Ltd., Anglo-Suisse Texas Offshore Partners, LLC., EOG Resources, Inc., Louis Dreyfus Energy Services, LP, and Superior Natural Gas Corporation without tiering the Monthly Index Price applicable to imbalances as required by the tiering provisions of section 32 of the General Terms and conditions of its tariff.

Northern states that the waiver is requested because the aforementioned parties incurred imbalances as a result of circumstances beyond their control.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time August 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15631 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–354–002]

Rockies Express Pipeline LLC; Notice of Compliance Filing

August 6, 2007.

Take notice that on August 1, 2007, Rockies Express Pipeline LLC (REX) tendered for filing in compliance with Federal Energy Regulatory Commission's Letter Orders issued September 21, 2006 and April 19, 2007 in Docket No. CP06–354, its FERC Gas Tariff, Second Revised Volume No. 1 in its entirety.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15638 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–032]

Rockies Express Pipeline LLC; Notice of Complance Filing

August 6, 2007.

Take notice that on July 31, 2007, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effectiveAugust 1, 2007:

Twenty-Seventh Revised Sheet No. 22
Third Revised Sheet No. 22A

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15646 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–14–008]

Saltville Gas Storage Company, LLC.; Notice of Compliance Filing

August 6, 2007.

Take notice that on July 31, 2007, Saltville Gas Storage Company, LLC. (Saltville) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, tariff sheets in Appendix A to become effective September 1, 2007.

Saltville states that this filing is being made in compliance with the Commission's orders in Saltville Gas Storage Company, LLC., 107 FERC ¶ 61,267, order on reh'g, 109 FERC ¶ 61,200 (2004), order on compliance, 110 FERC ¶ 61,318 (2005).

Saltville further states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15659 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL05–25–004; EL05–26–004; EL05–27–004]

Tenaska Alabama II Partners, L.P. v. Alabama Power Company and Southern Company Services, Inc.; Tenaska Alabama Partners, L.P. v. Alabama Power Company and Southern Company Services, Inc.; Tenaska Georgia Partners, L.P. v. Georgia Power Company and Southern Company Services, Inc.; Notice of Filing

August 6, 2007.

Take notice that on July 25, 2007, Southern Company Services, Inc., for itself and as agent for Alabama Power Company and Georgia Power Company, and Tenaska Georgia Partners, L.P., filed compliance filings pursuant to the Federal Energy Regulatory Commission's Order issued on June 25, 2007, *Tenaska Alabama II Partners, L.P., et al.*, v. *Alabama Power Company, et al.*, 119 FERC ¶ 61,315 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 15, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15640 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–541–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

August 6, 2007.

Take notice that on August 1, 2007, Southwest Gas Storage Company,

(Southwest Gas Storage) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twentieth Revised Sheet No. 5, to become effective September 1, 2007.

Southwest Gas Storage states that the primary reason for the filing of the revised tariff sheet is a general rate increase to adjust Southwest Gas Storage's rates for storage services. Projected storage revenues, excluding surcharges, are $50.6 million based on the 12-month period ending April 30, 2007, as adjusted, resulting in a $4.7 million increase when compared with actual revenues.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15651 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–538–000]

Steuben Gas Storage Company; Notice of Tariff Filing

August 6, 2007.

Take notice that on July 31, 2007, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 10; Second Revised Sheet No. 21; and First Revised Sheet No. 25, to be effective September 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15649 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–165]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Amendment Filing

August 6, 2007.

Take notice that on August 2, 2007, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a negotiated rate amendment between Tennessee and Inergy Gas Marketing, LLC (Inergy). Tennessee requests that the negotiated rate amendment between Tennessee and Inergy become effective on the later of September 1, 2007, or such other date as the Commission approves.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15656 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–552–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2007.

Take notice that on August 2, 2007, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as a part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets proposed to be effective on September 1, 2007:

Original Sheet No. 537A
Third Revised Sheet No. 538
Second Revised Sheet No. 629

Texas Eastern states that it is making this filing to add to the General Terms and Conditions (GT&C) a new section 3.14(G)(4), Obligations Related to Storage Releases for the purpose of clarifying procedures and obligations of parties applicable to capacity release transactions under storage Rate Schedules SS–1 and FSS–1.

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15627 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–554–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 6, 2007.

Take notice that on July 31, 2007 Transcontinental Gas Pipe Line Corporation (Transco) filed a report reflecting the flow through of refunds received from Dominion Transmission, Inc.

Transco states that on July 31, 2007, it refunded to its LSS, FT–NT and GSS customers $23,316.14 resulting from the refund of Dominion Transmission, Inc., Docket No. RP07–523–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time August 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15653 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

August 3, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–75–000.

Applicants: FH Opco LLC.

Description: FH Opco LLC's Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: August 2, 2007.

Accession Number: 20070802–5020.

Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–205–021; ER98–4590–021; ER98–2640–019; ER99–1610–025.

Applicants: Xcel Energy Services Inc.
Description: Change in Status Report Compliance Filing.
Filed Date: June 13, 2007.
Accession Number: 20070613–5038.
Comment Date: 5 p.m. Eastern Time on Friday, August 17, 2007.

Docket Numbers: ER04–1046–001.
Applicants: Rensselaer Plant Holdco, LLC.
Description: Rensselaer Cogeneration LLC submits a notification of a change in status to inform the Commission of a non-material departure from the characteristics relied upon by the Commission.
Filed Date: July 31, 2007.
Accession Number: 20070802–0110.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER06–1397–002.
Applicants: Allegheny Ridge Wind Farm, LLC.
Description: Notice of Change in Status of Allegheny Ridge Wind Farm, LLC.
Filed Date: July 30, 2007.
Accession Number: 20070730–5050.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER06–311–004.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator Inc and New York Transmission Owners submits its compliance filing with FERC's June 29, 2007 Order.
Filed Date: July 30, 2007.
Accession Number: 20070802–0094.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–319–003; EL07–73–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits their responses to the Commission's request for additional information regarding its real-time energy imbalance service market.
Filed Date: July 30, 2007.
Accession Number: 20070802–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 29, 2007.
Reply Comment: 5 p.m. Eastern Time on Friday, September 28, 2007.

Docket Numbers: ER07–390–001.
Applicants: Nevada Solar One, LLC.
Description: Notice of Non-Material Change in Status of Nevada Solar One, LLC.
Filed Date: August 2, 3007.
Accession Number: 20070802–5068.
Comment Date: 5 p.m. Eastern Time on Thursday, August 23, 2007.

Docket Numbers: ER07–771–001.
Applicants: E. ON U.S. LLC.
Description: Louisville Gas and Electric Co et al submits its revised Schedule 2, Reactive Power Supply and Voltage Control, under its Open Access Transmission Tariff.
Filed Date: July 30, 2007.
Accession Number: 20070802–0086.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–815–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits information requested in FERC's deficiency letter.
Filed Date: July 30, 2007.
Accession Number: 20070802–0089.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–905–001.
Applicants: Nevada Power Company; Sierra Pacific Resources Operating Company.
Description: Nevada Power Co and Sierra Pacific Power Co submits their compliance filing setting forth revisions to the Sierra Pacific resources Operating Companies' Open Access Transmission Tariff Capacity Based Network Service.
Filed Date: July 30, 3007.
Accession Number: 20070802–0090.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–1212–000.
Applicants: Forked River Power LLC.
Description: Petition for Market-Based Rate Authority, Acceptance of Initial Rate Schedule, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.
Filed Date: July 30, 2007.
Accession Number: 20070731–0086.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–1213–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits proposed rate changes. for wholesale and retail electric transmission rates shown in Appendices I, II and III of its Transmission Owner Tariff.
Filed Date: July 30, 2007.
Accession Number: 20070731–0107.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–1214–000.
Applicants: New England Power Company.
Description: New England Power Co submits a filing to amend the Service Agreement for Network Integration Transmission Service with Middleborough Gas and Electric Department.
Filed Date: July 30, 2007.
Accession Number: 20070802–0087.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–1215–000.
Applicants: The Royal Bank of Scotland PLC.
Description: Application of the Royal Bank of Scotland plc for order accepting Market based Rate Schedule for filing and granting waivers and blanket approvals etc FERC Electric Rate Schedule 1.
Filed Date: July 30, 2007.
Accession Number: 20070802–0088.
Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Docket Numbers: ER07–1227–000.
Applicants: Illinois Municipal Electric Agency.
Description: Illinois Municipal Electric Agency submits a notice of cancellation of its FERC Rate Schedule 1.
Filed Date: July 31, 2007.
Accession Number: 20070802–0108.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–41–001.
Applicants: Duquesne Light Company.
Description: Submittal of Pro Forma Financial Statements, Request for Permission to Issue Securities.
Filed Date: August 2, 2007.
Accession Number: 20070802–5030.
Comment Date: 5 p.m. Eastern Time on Friday, August 10, 2007.

Docket Numbers: ES07–54–000.
Applicants: Electric Transmission Texas, LLC.
Description: Application under section 104 of the Federal Power Act for authorization to issue securities of Electric Transmission Texas LLC.
Filed Date: August 1, 2007.
Accession Number: 20070803–0129.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–25–001.
Applicants: Duke Energy Carolinas, LLC
Description: Duke Energy Carolinas, LLC submits First Revised Sheet 4 *et al.* to FERC Electric Tariff, Fifth Revised Volume 4.
Filed Date: July 31, 2007.
Accession Number: 20070802–0109.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–25–001.

Applicants: Ecofin Holdings Limited.

Description: FERC Form 65 A Amended Exemption Notification of Ecofin Holdings Limited.

Filed Date: July 30, 2007.

Accession Number: 20070730–5012.

Comment Date: 5 p.m. Eastern Time on Monday, August 20, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–15594 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–470–000; CP06–471–000; CP06–472–000; CP06–473–000; CP06–474–000]

Southern Lng Inc.; Elba Express Company, LLC; Southern Natural Gas Company; Notice of Availability of the Final Environmental Impact Statement for the Elba III Project

August 3, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the U.S. Army Corps of Engineers (COE); U.S. Coast Guard (Coast Guard); and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service has prepared this final Environmental Impact Statement (EIS) for the Elba III Project. The project is proposed by Southern Natural Gas Company (Southern) and its subsidiaries Southern LNG Inc. (Southern LNG) and Elba Express Company, L.L.C. (EEC). The proposed facilities consist of an expansion of Southern LNG's existing onshore Elba Island Liquefied Natural Gas (LNG) Import Terminal on the Savannah River in Georgia and construction and operation of the Elba Express Pipeline—a natural gas pipeline with compression and other appurtenant facilities in various counties in Georgia and South Carolina.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). Its purpose is to inform the Commission, the public, and other permitting agencies about the potential adverse and beneficial environmental impacts associated with the proposed project. It also recommends practical, reasonable, and appropriate mitigation measures which would avoid or reduce significant adverse impacts to the maximum extent practicable and, where feasible, to less than significant levels.

In addition to the proposed action, the final EIS evaluates alternatives, including alternative energy sources, system alternatives, alternative sites for the LNG import terminal, alternative designs, pipeline alternatives, and alternatives to the Coast Guard Letter of Recommendation (LOR) action. The final EIS concludes that the Elba III Project is unlikely to result in significant adverse environmental impact on particular resources within the Zones of Concern because it is unlikely that a substantial cargo release would occur. In addition, if the project is constructed and operated in accordance with applicable laws and regulations, Southern LNG and EEC's proposed mitigation, and the additional mitigation recommendations (see section 5), it would be an environmentally acceptable action.

Proposed Facilities—Elba Terminal Expansion

Southern LNG plans to construct and operate an expansion of its existing LNG import terminal on Elba Island near Savannah, in Chatham County, Georgia. The expansion would; (a) More than double the terminal's LNG storage capacity by adding 405,000 cubic meters (m^3) of new storage; (b) substantially increase the facility's existing vaporization capacity; (c) upgrade the terminal's send-out meter station capacity by an additional 900 million cubic feet per day (MMcfd); and (d) modify the terminal's LNG tanker berthing and unloading facilities to accommodate larger tankers and provide simultaneous unloading of two LNG tankers. Terminal expansion would entail an increase in the frequency (and potentially the size) of LNG vessels using the Savannah River transit route. All of the planned facilities would be located entirely within the existing 190-acre facility site on Elba Island.

The LNG terminal expansion would be constructed in two phases, A and B. Phase A would be completed as early as January 2010 and would include the following facilities:

a. One new 200,000 m^3 (1.25 million barrels) LNG storage tank, one associated boil-off gas condenser, and three boil-off gas compressors;

b. Three submerged combustion vaporizers, each with a peak capacity of 180 MMcfd (providing a total peak send-out capacity of 1,755 MMcfd for the full facility at the completion of phase A); and

c. Modifications to the unloading docks to accommodate new, larger LNG tankers and to allow simultaneous unloading of two LNG tankers. The modifications to the dual berthing slip include:

- Adding four mooring dolphins (two for each berth);
- Dredging approximately 72,000 cubic yards of material from the slope at the back of the existing slip (and

disposing of dredged material into the existing spoil disposal area adjacent to the terminal); and

• Installing a sheet pile bulkhead at the back of the slip.

These modifications would allow the slip to accommodate larger LNG tankers with an approximate overall length of 345 meters (m) (compared to the current 288 m), breadth of 55 m (currently 49 m), design laden draft of 12.0 m (currently 11.7 m), and displacement of 177,000 metric tons (currently 128,000 metric tons). Slip modifications are designed to accommodate LNG vessels capable of transporting up to 266,000 m^3 of LNG, although carriers currently in service and delivering to the Elba terminal typically transport between 125,000 and 145,000 m^3.

Phase B would be completed no later than December 2012 and would include the following facilities:

a. One new 200,000 m^3 LNG storage tank; and

b. Three submerged combustion vaporizers (two for service and one spare), each with a peak send-out capacity of 360 MMcfd (providing a total peak send-out capacity of 2,115 MMcfd for the full facility at the completion of phase B).

Each of the two phases would include all necessary ancillary equipment including related pumps, piping, controls and appurtenances, and associated systems (electrical, mechanical, civil, instrumentation, hazard detection, and fire protection) and buildings necessary to accommodate the associated tanks and vaporizer units. Southern LNG estimates that following the expansion, the terminal would receive LNG shipments about every 5 to 10 days, depending on natural gas demand and LNG carrier size.

Elba Express Pipeline

EEC plans to construct and operate about 188 miles of new natural gas pipeline and appurtenant facilities in Georgia and South Carolina. The pipeline would be constructed in two phases, extending between an interconnection with Southern near Port Wentworth, Chatham County, Georgia on the southern end and an interconnection with Transcontinental Gas Pipe Line Corporation (Transco) in Anderson County, South Carolina on the northern end.

The first phase is proposed to be placed in service no later than July 2011 with a design capacity of 945 MMcfd, and would consist of:

a. The ''Southern Segment,'' which includes about 104.8 miles of 42-inch-diameter pipeline extending from Port Wentworth to the existing Southern Wrens Compressor Station (Wrens) in Jefferson County, Georgia (to be collocated in a corridor with existing Southern pipelines); and

b. The ''Northern Segment,'' which includes about 10 miles of 42-inch-diameter pipeline and 72.3 miles of 36-inch-diameter pipeline extending from Wrens to interconnections with Transco in Hart County, Georgia, and Anderson County, South Carolina.

The second phase would involve construction and operation of a new compressor station of about 10,000 horsepower near Millen, Jenkins County, Georgia. The compressor station would increase the pipeline design capacity by 230 MMcfd to a total of 1,175 MMcfd, and is proposed to be placed in service no later than January 2013.

The Coast Guard has assessed potential risks to navigation safety and port security associated with the proposed project. The Coast Guard's safety and security assessment is documented in the Captain of the Port's Waterway Suitability Report (WSR). The final EIS includes an analysis of the environmental impacts related to the Coast Guard's LOR regarding the suitability of the Savannah River for more frequent and larger LNG vessel operations.

The Coast Guard Captain of the Port will issue an LOR to Southern LNG and the appropriate federal, state and local agencies, in accordance with 33 CFR 127.009. The LOR, which will be based on the Coast Guard's WSR, is an official determination regarding the suitability or unsuitability of the waterway to support the proposed terminal expansion and associated LNG marine traffic. The Coast Guard intends to adopt all or portions of this EIS to serve as the NEPA analysis for the LOR. The LOR will not be issued until after the NEPA process has been completed.

Additional information about the Elba III Project and relevant Coast Guard authorities and responsibilities can be obtained from: Charlie Johnson, Port Security Specialist, Coast Guard Marine Safety Unit Savannah, 100 W. Oglethorpe Avenue, JGL Federal Building,Savannah, GA 31401, (912) 652–4353 ext. 271.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of hard copies and CD-ROMs are available from the Public Reference Room identified above. CD-ROM copies of the final EIS have been mailed to federal, state, and local agencies; public interest groups; libraries and newspapers in the project area; affected landowners; individuals who requested a copy of the final EIS; and parties to these proceedings. Hard copy versions of the final EIS were mailed to those specifically requesting them.

The COE is accepting comments on this final EIS for a period of 30 days after a notice of its availability is published in the **Federal Register**. The COE is particularly interested in comments pertaining to decisions it must make on the Elba III Project. These include a Section 404 Permit for expansion of the existing terminal, a Section 404 Permit for wetland impacts associated with construction of the pipeline, an easement where the pipeline crosses COE-managed lands, modifications to existing COE wildlife mitigation lands, and approval for a large fuel-carrying pipeline across federal property. Comments on these issues may be submitted either by e-mail to the following address: *william.g.bailey@sas02.usace.army.mil* or in hard copy to the following address: U.S. Army Corps of Engineers, Savannah District, ATTN: Mr. William Bailey (PD-E), Post Office Box 889, Savannah, GA 31402–0889.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the ''eLibrary'' link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15633 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–32–000]

Gulf South Pipeline Company, LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Southeast Expansion Project

August 3, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Final Environmental Impact Statement (EIS) for the natural gas pipeline facilities proposed by Gulf South Pipeline Company, LP (Gulf South) under the above-referenced docket. Gulf South's Southeast Expansion Project (Project) would be located in various counties and parishes in eastern Louisiana, Mississippi, and western Alabama.

The Final EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that the proposed Project, with the appropriate mitigation measures as recommended, would have limited adverse environmental impact.

The U.S. Fish and Wildlife Service (FWS), U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (COE) are federal cooperating agencies for the development of this EIS. A federal cooperating agency has jurisdiction by law or special expertise with respect to any environmental impact involved with the proposal and is involved in the NEPA analysis.

Gulf South indicates that the general purpose of the proposed Project is to provide producers in eastern Texas and northern Louisiana an eastern market outlet for production from CenterPoint Energy Gas Transmission Company in the Perryville, Louisiana, area.

The Final EIS addresses the potential environmental impacts resulting from the construction and operation of the following facilities:

- Approximately 111 miles of 42-inch-diameter natural gas transmission pipeline extending easterly from Simpson County, Mississippi, to Choctaw County, Alabama;
- Three new compressor stations, the Delhi, Harrisville, and Destin Compressor Stations, located in Richland County, Louisiana; Simpson County, Mississippi; and Choctaw County, Alabama, respectively; and
- Other ancillary facilities including five meter and regulator (M/R) facilities, eight mainline valves, one side valve, and two pig launcher and/or receiver facilities.

Dependent upon Commission approval, Gulf South proposes to complete construction and begin operating the proposed Project in January 2008.

The Final EIS has been placed in the public files of the FERC and is available for public inspection at:Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A,Washington, DC 20426, (202) 502–8371.

A limited number of copies of the Final EIS are available from the Public Reference Room identified above. In addition, CD copies of the Final EIS have been mailed to affected landowners; various federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; intervenors; and other individuals that expressed an interest in the proposed Project. Hard-copies of the Final EIS have also been mailed to those who requested that format during the scoping and comment periods for the proposed Project.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency (EPA) publishes a notice of availability of a Final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the Final EIS is published, allowing both periods to run concurrently. Should the FERC issue Gulf South authorizations for the proposed Project, it would be subject to a 30-day rehearing period. Therefore, the Commission could issue its decision concurrently with the EPA's notice of availability.

Additional information about the proposed Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*). To access information via the FERC Web site, click on the ''eLibrary'' link, then click on ''General Search'' and enter the docket number (CP07–032), excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. The ''eLibrary'' link provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For assistance with ''eLibrary,'' please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to these documents. To learn more about eSubscription and to sign-up for this service, please go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15628 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12455–004]

Borough of Leighton, PA, Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 3, 2007.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* 12455–004.

c. *Date Filed:* December 29, 2006.

d. *Applicant:* Borough of Leighton, Pennsylvania.

e. *Name of Project:* Beltzville Hydroelectric Project.

f. *Location:* The project would be connected to the U.S. Army Corps of Engineers' Beltzville Dam, located on Pohopoco Creek, in the Borough of Leighton, Carbon County, Pennsylvania.

g. *Filed Pursuant to:* The Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Hanosek, P.E., Borough manager, P.O. Box 29, Municipal Building, Second and South Street, Leighton, PA 18235, (610) 377–4002.

i. *FERC Contact:* Jack Hannula, (202) 502–8917 or *john.hannula@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *Description of Project:* The project would be located on the downstream side of the existing Corps of Engineers Beltzville Dam consisting of: (1) A 175-foot-high, 4,600-foot-long earth-fill dam with a 23-foot-high, 2,000-foot-long un-gated concrete spillway impounding; (2) a 949-acre reservoir with a normal water surface elevation of 628.0 feet mean sea level with; (3) a 193-foot-high; 72-foot-long, 42-foot-wide water intake tower equipped with four flood control service gates and 8 water quality portals with gates connected to; (4) a 7-foot-diameter, 1,175-foot-long conduit leading to; (5) a 110-foot-long, 34-foot-wide stilling basin.

The proposed Beltzville Hydroelectric Project would consist of: (1) An existing 84-inch conduit that would be modified to include; (2) a new 78-inch-diameter steel pipe liner equipped with a 78-inch butterfly valve and 84-inch slide gate; (3) an existing 16-inch-diameter, 36-foot-long bypassed flow penstock; (4) a new 60-inch diameter, 37-foot-long Y-branch penstock that bifurcates into a 36-inch-diameter, 43-foot-long penstock and a 48-inch-diameter, 39-foot-long penstock leading to; (5) a new powerhouse containing a 1,700 kilowatt (kW) and a 900 kW generating units for a total installed capacity of 2,600 kW; (6) a 300-foot-long, 12-kilovolt transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscribenow.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural schedule: The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of the EA: January 2008.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

o. The license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15629 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

August 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12809–000.

c. *Date Filed:* July 10, 2007.

d. *Applicant:* James R. Robertson.

e. *Name and Location of Project:* The proposed Cave Run Lake Dam Hydroelectric Project would be located on Licking River in Bath and Rowan Counties, Kentucky. The existing Cave Run Lake Dam is administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. James Robertson, 5702 Reno Court, Boonsboro, MD 21713, (301) 432–7882.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12809–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Proposed Project:* The proposed project, utilizing the existing U.S. Army Corps of Engineers' Cave Run Lake Dam and would consist of: (1) A proposed intake structure, (2) a proposed 12,000-foot-long, 48-inch-diameter steel penstock, (3) a proposed powerhouse containing two generator units with a total installed capacity of 4.4 megawatts, (4) a quarter-mile-long transmission line interconnection, and (5) appurtenant facilities. The project would have an annual generation of 26 GWh which would be sold to a local utility.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15643 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12810–000]

Natural Currents Energy Services, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12810–000.

c. *Date filed:* July 10, 2007.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Housatonic Tidal Energy Plant.

f. *Location:* The project would be located in the Housatonic River near the towns of Shelton and Derby, approximately one-half mile south of Wooster Island, in Fairfield and New Haven Counties, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12561, phone (845)–691–4008.

i. FERC Contact: Chris Yeakel, (202) 502–8132.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) One or several Tidal In-Stream Energy Conversion (TISEC) devices, using new technology, such as the Gorlov Helical Turbine and/or Natural Currents Red Hawk TISEC technology, (2) anchoring systems, (3) mooring lines, and (4) interconnection transmission lines. The initial project installation is estimated to have an installed capacity up to 3 megawatts, and an average annual generation of 9,000 megawatt-hours per year, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15644 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2365–040]

Madison Paper Industries, Inc.; Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

August 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for temporary modification of the project operation to lower the water level in the project Forebay.

b. *Project No.:* 2365–040.

c. *Date Filed:* August 1, 2007.

d. *Applicant:* Madison Paper Industries, Inc.

e. *Name of Project:* Anson Project.

f. *Location:* On the Kennebec River, in Somerset County, Maine. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* David Lovely, Hydro Supervisor, Madison Paper Industries, P.O. Box 129, 3 Main Street, Madison, Maine 04950–0129, (207) 696–1225.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, motions to intervene and protest:* August 20, 2007.

Please include the project number (P–2365–040) on any comments or motions filed. All documents (original and seven copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–2365–040) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The license request approval to temporarily modify the operation of the project by lowering the water level in the project forebay to allow repair of the western forebay wall.

This maintenance work will consist of refacing the existing wall through the placement of forms and pouring concrete. In order to expose the area to be repaired such that the majority of the work will occur above the waterline, MPI proposes to temporarily lower the water lever of the forebay and headpond by approximately 2.5 feet from normal pond level of 248.15, at the top of the inflatable flashboards. The licensee proposes to gradually lower the forebay from its normal full pool elevation and to maintain the reduced water level via operation of the powerhouse turbines and deflating the inflatable flashboards and waste gate. The required minimum downstream flow (1,540 cfs or inflow, whichever is less) in the Anson tailrace will be maintained during this drawdown period via the turbines and flashboards/waste gate as well. The licensee anticipates a need to maintain this lowered elevation for intermittent periods of time for up to two months beginning on or about August 6, 2007 while the work is being accomplished. If there is sufficient inflow to the project, the licensee proposed to raise the pond level to the normal operating elevation on weekends and other periods when the Contractor is not working. Once the repair work, along the wall progresses above the lower elevation the pond level will be returned to the normal operating level.

The licensee proposes to maintain minimum downstream flows while refilling the project forebay by gradually filling the pond through maintaining a higher inflow than outflow, until the pond level is returned to normal.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection and reproduction at the Commission's Public Reference Room, located at 888 First St., NE., Room 2A, Washington, DC 20426. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* or for TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* (Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210. 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

o. Any filings must bear in all capital letters the title ''Comments'', ''Protest'', or ''Motion to Intervene'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15645 Filed 8–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Granby Pumping Plant-Windy Gap Transmission Line Rebuild Project, Grand County, CO

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Conduct Scoping; Notice of Floodplain and Wetlands Involvement.

SUMMARY: The Western Area Power Administration (Western), U.S. Department of Energy (DOE), intends to prepare an Environmental Impact Statement (EIS) for rebuilding the Granby Pumping Plant-Windy Gap transmission line in Grand County, Colorado. The U.S. Forest Service (USFS) will participate in the preparation of the EIS, which will address the proposed removal of about 12 miles of 69-kilovolt (kV) transmission line, the construction and operation of about 12 miles of new 138–kV double-circuit transmission line (operated at 69/138–kV), and adding a second power transformer. Input for the scope of the EIS may be provided in writing or at an open-house scoping meeting in the project area.

DATES: An open-house public scoping meeting will be held Thursday, August 30, 2007, from 4 p.m. to 7 p.m. in Granby, Colorado. The public scoping period starts with the publication of this notice in the **Federal Register** and closes at midnight on September 17, 2007. To be assured of consideration, all

comments or suggestions regarding the appropriate scope must be received by the end of the scoping period.

ADDRESSES: The open-house public scoping meeting will be held at Mountain Parks Electric, Inc., 321 West Agate Avenue, Granby, CO 80446–0170. Written comments regarding the project should be addressed to Mr. Rodney Jones, NEPA Document Manager, Western Area Power Administration, Rocky Mountain Region, P.O. Box 3700, Loveland, CO 80539–3003; fax (970) 461–7213, or e-mail *GPPWGP@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed project, to be added to the project mailing list, or to request a copy of the EIS, contact Mr. Rodney Jones at the address provided above or at toll-free telephone (800) 472–2306. For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western is a power marketing agency of DOE that markets Federal electric power to statutorily defined customers, including project use, municipalities, irrigation districts, and Native American tribes. Western initially determined that an Environmental Assessment (EA) would be prepared for the proposed Granby Pumping Plant-Windy Gap Transmission Line Rebuild Project on February 25, 2005. Western held open-house scoping meetings on July 28, 2005, and November 15, 2006. The public expressed numerous concerns about the impacts of the project. Based on a review of the public's concerns, Western subsequently determined that an EIS would be prepared.

The EIS will address the environmental impacts of the proposal to remove about 12 miles of existing 69–kV transmission line and the construction and operation of about 12 miles of new 138–kV double-circuit transmission line (which would be operated at 69/138–kV), and adding a second power transformer. Alternatives, including the no action alternative, will also be addressed in the EIS. Western's EIS process will comply with NEPA (42 U.S.C. 4321–4347, as amended), Council on Environmental Quality regulations for implementing NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508) and DOE NEPA implementing procedures (10 CFR part 1021). Because the proposed project may involve action in floodplains, the EIS will include a floodplain assessment and floodplain statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022).

Description

Western's Rocky Mountain Region proposes to rebuild and upgrade the Granby Pumping Plant-Windy Gap 69–kV transmission line, between the Windy Gap Substation and the Granby Pumping Plant, a distance of approximately 11.7 miles. The transmission line, which was constructed on wood-pole H-frame structures, is located in Grand County, Colorado, near the towns of Granby and Grand Lake. Other participants in the project include Tri-State Generation and Transmission, Inc. (Tri-State) and the Northern Colorado Water Conservancy District (NCWCD).

Western's Granby Pumping Plant-Windy Gap 69–kV transmission line has been in operation approximately 65 years. It supplies electrical power to the Colorado-Big Thompson Project (C–BT) facilities and electrical substations operated by Mountain Parks Electric, Inc. (MPEI), a Tri-State member operating company.

The area transmission system has also been served by the Bureau of Reclamation's (Reclamation) Adams Tunnel 69–kV cable for the past 50 years, and the cable is at the end of its planned service life. The Adams Tunnel 69–kV cable provides Tri-State with a second power source for MPEI loads. In 1992, Western and Reclamation studied costs, engineering requirements and electrical system constraints for replacing the Adams Tunnel cable in anticipation of its eventual failure. In 1994, Western and Reclamation decided not to replace the cable if it fails.

For electrical service reliability, Tri-State must maintain a second source of power for MPEI loads. The result of systems studies by both Western and Tri-State demonstrated electrical system reliability improvements when a new 138–kV transmission line was added between the Windy Gap and Granby substations.

The NCWCD expressed interest in extending the 138–kV transmission line directly to C–BT Project facilities at Granby Pumping Plant to allow better voltage support for motor starting at Granby Pumping Plant.

The proposed project includes the following actions.

- Remove 10.0 miles of 69–kV circuit: Windy Gap Substation-Stillwater Tap.
- Remove 1.7 miles of 69–kV circuit: Stillwater Tap to Granby-Granby Pumping Plant Substation.
- Remove three 69–kV line switches at Granby Tap.
- Construct 10.0 miles of 138-kV double-circuit transmission line with overhead fiber optic ground wire (operated at 69/138–kV): Windy Gap Substation-Stillwater Tap.
- Construct 1.7 miles of 138–kV double-circuit transmission line with overhead fiber optic ground wire (operated at 69/138–kV): Stillwater Tap-Granby Pumping Plant Substation.
- Install 69–kV three-way line switches at new Willow Creek Tap (replaces Granby Tap).
- Install 69–kV three-way line switches at Stillwater Tap.
- Construct a new 138/69–kV Granby Pumping Plant Substation, consisting of two circuit breakers with 138–kV main and transfer busses and a 138/69–kV power transformer.
- Install a new 69–kV circuit breaker at the existing 69/6.9–kV Granby Pumping Plant Substation.
- Install a new 138–kV circuit breaker bay at the Windy Gap Substation.

The right-of-way for the existing transmission line is generally 30-feet wide, which is inadequate for new transmission line construction and maintenance. Some segments of the proposed rebuilt and upgraded transmission line would be constructed on new rights-of-way on alternative alignments. Remaining segments of the transmission line would be constructed on existing rights-of-way that will be widened to accommodate construction, operation, and maintenance.

The proposed substation site for the new 138/69–kV Granby Pumping Plant Substation would be approximately 200 feet by 150 feet in area, and located entirely on Reclamation property.

No Action Alternative

Under the No Action alternative, none of the proposed facilities would be constructed, and the existing 69–kV transmission line would be left in place. Different transmission projects could be proposed by other entities to strengthen the electrical system in the project area.

Agency Responsibilities

Western has determined that an EIS is required under DOE NEPA implementing procedures, 10 CFR 1021, in light of the public's concerns about potential impacts of the project. Western will be the lead Federal agency for preparing the EIS, as defined in 40 CFR 1501.5. In addition, the USFS has been designated a cooperating agency. Western invites interested agencies,

Tribes, organizations, and members of the public to submit comments or suggestions to assist in identifying environmental issues and in determining the appropriate scope of the EIS. Western will invite other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise, with respect to environmental issues, to be cooperating agencies on the EIS, as defined in 40 CFR 1501.6. Such agencies also may make a request to Western to be a cooperating agency. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified in 40 CFR 1501.6(b).

Environmental Issues

The EIS will address impacts from the proposed project and a range of reasonable alternatives that achieve that same purpose and need. This notice is to inform agencies and the public of the proposed project and solicit comments and suggestions for consideration in preparing the EIS. To help the public frame its comments, this notice contains a list of potential environmental issues Western has tentatively identified for analysis. These issues include:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants or their critical habitats;
2. Impacts on other biological resources;
3. Impacts on land use, recreation, and transportation;
4. Impacts on floodplains and wetlands;
5. Impacts on cultural or historic resources and tribal values;
6. Impacts on human health and safety;
7. Impacts on air, soil, and water resources (including air quality, surface water impacts, and groundwater impacts);
8. Visual impacts; and
9. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

Opportunities for public participation are planned for the entire EIS process. Western anticipates the EIS process will take about 12 months and will include an open-house public scoping meeting; consultation and involvement with appropriate Federal, State, local, and tribal agencies; public review and hearing on the published Draft EIS; a published Final EIS; and publication of a Record of Decision. Western will mail newsletters to the mailing list developed for the proposed project to communicate project status and developments. Anyone may request to be placed on the mailing list.

The scoping period will provide opportunity for interested members of the public, representatives of groups, and Federal, State, local, and tribal agencies to give input on the scope of alternatives and issues that will be addressed in the EIS. As part of the scoping period, Western will hold a public open-house scoping meeting near the project area. Interested individuals and groups are invited to attend anytime between 4 and 7 p.m., according to the date and location noted above. The open-house scoping meeting will be informal, with Western representatives available for one-on-one discussions with attendees. Attendees will have the opportunity to view maps of the proposed transmission line route, learn about the NEPA process and the proposed schedule, suggest changes and improvements to the proposed project, and obtain additional information. Written comments regarding environmental issues, alternatives, and other scoping issues may be turned in at the scoping meetings or may be provided to Western by fax, e-mail, U.S. Postal Service, or other carrier. Although comments on the proposed project may be submitted at any time during the EIS process, to be assured consideration in helping define the scope of the EIS, all comments or suggestions regarding the appropriate scope must be received by the end of the scoping period. Comments received by Western at or as a result of the July 28, 2005, and November 15, 2006, open houses will be used to help define the scope of the EIS.

Dated: July 30, 2007.

Timothy J. Meeks,

Administrator.

[FR Doc. E7–15666 Filed 8–9–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0775; FRL–8452–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Stationary Gas Turbines (Renewal); EPA ICR Number 1071.09, OMB Control Number 2060–0028

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 10, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0775, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA–2006–0775, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket Center is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Stationary Gas Turbines (Renewal).

ICR Numbers: EPA ICR Number 1071.09, OMB Control Number 2060–0028.

ICR Status: This ICR is scheduled to expire on August 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standard (NSPS) for Stationary Gas Turbines (40 CFR part 60, subpart GG) were proposed on October 3, 1977, and promulgated on September 10, 1979. Owners and operators of stationary gas turbines must submit a one-time-only notification of construction/reconstruction, modification, and startup date, initial performance test date, physical or operational changes, and demonstration of a continuous monitoring system. They also must provide a report on initial performance test result, monitoring results and any excess emissions. Records must be maintained of startups, shutdowns, malfunctions; periods when the continuous monitoring system is inoperative; sulfur and nitrogen content of the fuel; fuel to water ration; rate of fuel consumption; and ambient conditions. Semiannual reports are also required.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart GG, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 56 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Stationary gas turbines.

Estimated Number of Respondents: 535.

Frequency of Response: Initially, semiannually, and occasionally.

Estimated Total Annual Hour Burden: 59,519.

Estimated Total Costs: $3,837,190 which includes $0 annualized Capital Startup costs, $0 annualized Operations & Maintenance costs (O&M) and $3,837,190 annualized Labor Costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Dated: August 3, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–15673 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6689–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070207, ERP No. D–AFS–J65482–SD, Citadel Project Area, Proposes to Implement Multiple Resource Management Actions, Northern Hills Ranger District, Black Hills National Forest, Lawrence County, SD

Summary: EPA expressed environmental concerns about the potential impacts to water quality,

aquatic resources and wildlife habitat from new road construction and impacts from existing roads need maintenance, and suggested that the final EIS include additional information on implementing proposed road closures.

Rating EC2.

EIS No. 20070222, ERP No. D–AFS–J65484–MT, Grizzly Vegetation and Transportation Management Project, Proposes Timber Harvest, Prescribed Burning, Road Maintenance, and Transportation Management Actions, Three Rivers Ranger District, Kootenai National Forest, Lincoln County, MT

Summary: EPA expressed environmental concerns about potential adverse impacts to soil and water quality.

Rating EC2.

EIS No. 20070238, ERP No. D–AFS–K65328–00, Mt. Ashland Late-Successional Reserve Habitat Restoration and Fuels Reduction Project, To Promote and Maintain Late-Successional Habitat, Oak Ranger District, Klamath National Forest, Siskiyou County, CA and Jackson County, OR

Summary: EPA expressed environmental concerns about impacts to riparian areas and the watershed from proposed silviculture treatments and recommended that the Final EIS include information about potential source water locations in the project area, and identify Alternative 5 as the Preferred Alternative.

Rating EC2.

Final EISs

EIS No. 20070219, ERP No. F–AFS–J65478–00, Norwood Project, Proposes to Implement Multiple Resource Management Actions, Black Hills National Forest, Hell Canyon Ranger District, Pennington County, SD and Weston and Crook Counties, WY

Summary: The final EIS and additional information adequately addressed EPA's concerns with impacts to water quality soils and wetlands, roads, sedimentation and OHV use, invasive and noxious weeds, and wildlife habitat; therefore, EPA does not object to this proposed action.

EIS No. 20070233, ERP No. F–NPS–J65461–CO, Great Sand Dunes National and Preserve. General Management Plan/Wilderness Study, Implementation, Alamos and Saguache Counties, CO

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070235, ERP No. F–BLM–K65306–CA, Alturas Field Office Project, Resource Management Plan, Implementation, Alturas Field Office Project, Resource Management Plan, Implementation, Lassen, Modoc, Shasta and Siskiyou Counties, CA

Summary: EPA continues to have environmental concerns about water quality, soil condition and rangeland habitat, and requested that BLM focus on relieving grazing pressure in Category 1 rangelands until these areas improve. EPA also requested the closure of OHV route segments adjacent to waters to improve soil conditions, habitat, and water quality.

EIS No. 20070236, ERP No. F–BLM–K65307–00, Eagle Lake Field Office Project, Resource Management Plan, Implementation, Lassen, Plumas, Sierra Counties, CA and Washoe County, NV

Summary: EPA continues to have environmental concerns about water quality and soil condition and rangeland habitat, and requested that BLM focus on relieving grazing pressure in Category 1 rangelands until these areas improve. EPA also requested the closure of additional OHV route segments adjacent to waters to improve soil conditions, habitat, and water quality.

EIS No. 20070240, ERP No. F–AFS–J65401–00, Northern Rockies Lynx Management Direction, Selected Alternative F, Conservation and Promote Recovery of the Canada Lynx, NFS and BLM to Amend Land Resource Management Plans for 18 National Forests (NF), MT, WY, UT, and ID

Summary: EPA continues to have environmental concerns about mitigation measures to protect the lynx and its habitat.

EIS No. 20070283, ERP No. F–AFS–L65532–OR, Five Buttes Project, Conduct Vegetation Management Activities, Implementation, Deschutes National Forest, Crescent Ranger District, Deschutes County, OR

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070293, ERP No. F–SFW–A65170–00, Light Goose Management Plan, Reducing and Stabilizing Specific Populations ''Light Geese'' in North America, Implementation

Summary: EPA does not object to the proposed action.

EIS No. 20070254, ERP No. FS–TVA–E06008–TN, Watts Bar Nuclear Plant Unit 2, Completion and Operation, Updated Information on Extensive Environmental Record, Rhea County, TN

Summary: EPA continues to have environmental concerns about the ongoing need for appropriate storage and ultimate disposition of radioactive waste generated on-site. EPA also has concerns about the lack of measures to limit bioentrainment and other impacts to aquatic species from surface water withdrawals and discharges.

Dated: August 7, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–15714 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6689–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/30/2007 Through 08/03/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070328, Final Supplement, BLM, MT, Golden Sunlight Mine Pit Reclamation Alternatives, Preferred Alternative Selected is the Underground Sump Alternative, Operating Permit No. 00065 and Plan-of-Operations #MTM 82855, Whitehall, Jefferson County, MT, *Wait Period Ends:* 09/10/2007, *Contact:* David Williams 406–533–7655.

EIS No. 20070329, Final EIS, GSA, OH, Cincinnati National Institute for Occupational Safety and Health (NIOSH) Laboratories Consolidation, Site Selection, Hamilton and Clermont Counties, OH, *Wait Period Ends:* 09/10/2007, *Contact:* Phil Youngberg 404–433–8393.

EIS No. 20070330, Draft EIS, IBW, CA, PROGRAMMATIC—Tijuana River Flood Control Project, Proposing a Range of Alternatives for Maintenance Activities and Future Improvements, San Diego County, CA, *Comment Period Ends:* 09/24/2007, *Contact:* Daniel Borunda 915–832–4767.

EIS No. 20070331, Draft EIS, IBW, TX, PROGRAMMATIC—Rio Grande Flood Control Projects, Proposing a Range of Alternatives for Maintenances Activities and Future Improvements, along the Texas-Mexico Border, *Comment Period Ends:* 09/24/2007, *Contact:* Daniel Borunda 915–832–4767.

EIS No. 20070332, Draft EIS BLM, OR, Western Oregon Bureau of Land Management Districts of Salem,

Eugene, Roseburg, Coos Bay, and Medford Districts, and the Klamath Falls Resource Area of Lakeview District, Revision of the Resource Management Plans, Implementation, OR, *Comment Period Ends:* 11/09/2007, *Contact:* Dick Prather 503–808–6627.

EIS No. 20070333, Final EIS, AFS, OR, Spears Vegetation Management Project, Proposal to Use Commercial Timber Harvest, Precommercial Thinning, Prescribed Fire, Grapple Piling and Hand Piling in the Mark Creek Watershed and Veaqie Creek Subwatershed, Lookout Mountain Ranger District, Ochoco National Forest, Crook and Wheeler Counties, OR, *Wait Period Ends:* 09/10/2007, *Contact:* Katherine Farrell 541–416–6500.

EIS No. 20070334, Final EIS, AFS, CO, Lizard Head Road Easement, Application from Private Landowners Requesting a Permit to Cross Public Lands to Access Non-Federal Lands, San Juan National Forest, Dolores Ranger District, Dolores County, CO, *Wait Period Ends:* 09/10/2007, *Contact:* Jim Powers 970–385–1211.

EIS No. 20070335, Final EIS, NRC, VT Generic—License Renewal of Nuclear Plants, Supplement 30 to NUREG1437, Regarding Vermont Yankee Nuclear Power Station, Vernon, VT, *Wait Period Ends:* 09/10/2007, *Contact:* Richard L. Emch 301–415–1570.

EIS No. 20070336, Final EIS, FHW, UT, South Logan to Providence Transportation Corridor Project, Improvements to 100 East Street between 300 South (Logan) to Providence Lane (100 North) in Providence, Funding and Right-of-Way Grant, Cities of Logan and Providence, Cache County, UT, *Wait Period Ends:* 09/10/2007, *Contact:* Doug Atkin 801–963–0182.

EIS No. 20070337, Final EIS, TVA, AL, Bear Creek Dam Leakage Resolution Project, To Modify Dam and Maintain Summer Pool Level of 576 Feet, Bear Creek Dam, Franklin County, AL, *Wait Period Ends:* 09/10/2007, *Contact:* Charles P. Nicholson 865–632–3582.

EIS No. 20070338, Draft Supplement, TVA, TN, Watts Bar Reservoir Land Management Plan, Amend and Update the 2005 Plan, Guide Land Use Approvals, Private Water Use Facility, and Resource Management Decisions, Loudon, Meigs, Rhea and Roane Counties, TN, *Comment Period Ends*: 09/24/2007, *Contact:* Richard L. Toennisson 865–632–8517.

EIS No. 20070339, Draft EIS, COE, GU, Apra Harbor Master Plan for Deep-Draft Wharf and Fill Improvements, Implementation, Piti, Guam, *Comment Period Ends:* 09/24/2007, *Contact:* James Hatashima 808–438–2264.

EIS No. 20070340, Final EIS, FRC, 00, Southeast Expansion Project, Construction and Operation of 110.8 miles for Natural Gas Pipeline and Associated Ancillary Facilities, TX and LA, *Wait Period Ends:* 09/10/2007, *Contact:* Andy Black 1–866–208–3372.

EIS No. 20070341, Final EIS, NPS, MA, Cape Cod National Seashore (CACO) Hunting Program, General Management Plan, Implementation, Barnstable County, MA, *Wait Period Ends:* 09/10/2007, *Contact:* Carrie Phillips 508–349–3785 Ext. 216.

EIS No. 20070342, Final EIS, FRC, GA, Elba III Project, Construct, Operate and Acquire Facilities to move Re-Vaporized Liquefied Natural Gas (LNG), U.S. Army COE Section 10 and 404 Permits and U.S. Coast Guard Permit, Elba Island, Chatham County, GA, *Wait Period Ends:* 09/10/2007, *Contact:* Andy Black 1–866–208–3372.

EIS No. 20070343, Draft EIS, STA, 00, Keystone Oil Pipeline Project, Proposed Construction, Connection, Operation and Maintenance, Applicant for Presidential Permit, ND, SD, NE, KS, MO, IL and OK, *Comment Period Ends:* 09/24/2007, *Contact:* Elizabeth Orlando 202–647–4284.

EIS No. 20070344, Draft EIS, FHW, VT, Circ-Williston Transportation Project, Improvements between I–89 and the Towns Williston and Essex and the Village of Essex Junction, City of Burlington, Chittenden County, VT, *Comment Period Ends*: 11/08/2007, *Contact:* Kenneth R. Sikora, Jr. 802–828–4424.

Amended Notices

EIS No. 20070266, Draft EIS, SFW, 00, Lake Umbagog National Wildlife Refuge, Comprehensive Conservation Plan, 15 Year Guidance for Management of Refuge Operations, Habitat and Visitor Services, Implementation, Coos County, NH and Oxford County, ME, *Comment Period Ends:* 09/21/2007, *Contact:* Nancy McGarigal 413–253–8562 Revision of FR Notice Published 07/06/2007: Extending Comment Period from 08/20/2007 to 09/21/2007.

EIS No. 20070307, Draft EIS, USA, 00, Permanent Home Stationing of the 2/25th Stryker Brigade Combat Team (SBECT), to Address a Full Range of Alternatives for Permanently Stationing the 2/25th SBCT, Hawaii and Honolulu Counties, HI; Anchorage and Southeast Fairbanks Boroughs, AK; El Paso, Pueblo, and Fremont Counties, CO, *Comment Period Ends:* 10/30/2007, *Contact:* Michael Ackerman 410–436–2522. Revision of FR Notice Published 07/20/2007; Extending Comment Period from 09/04/2007 to 10/30/2007.

EIS No. 20070322, Draft EIS, NPS, AZ, Saguaro National Park General Management Plan, Implementation, Rincon Mountain District and Tucson Mountain District, Pima County, AZ, *Comment Period Ends:* 10/02/2007, *Contact:* Mary McVeigh 303–969–2442. Revision of FR Notice Published 08/03/2007: Correction to Comment Period from 09/17/2007 to 10/02/2007.

Dated: August 6, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 07–3921 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8453–2; Docket ID No. EPA–HQORD–2007–0667]

Climate and Land Use Change Effects on Ecological Resources in Three Watersheds: A Synthesis Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, ''Climate and Land Use Change Effects on Ecological Resources in Three Watersheds: A Synthesis Report'' (EPA/600/R–07/086). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA intends to consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins August 10, 2007, and ends September 10, 2007. Technical comments should be in writing and

must be received by EPA by September 10, 2007.

ADDRESSES: The draft ''Climate and Land Use Change Effects on Ecological Resources in Three Watersheds: A Synthesis Report'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff of the National Center for Environmental Assessment (NCEA–TIS). Please contact the Technical Information Staff by telephone at 202–564–3261 or by facsimile at 202–565–0050. If you are requesting a paper copy, please provide your name, your mailing address, and the draft document title, ''Climate and Land Use Change Effects on Ecological Resources in Three Watersheds: A Synthesis Report.''

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For technical information, contact Susan Julius, NCEA, telephone: 202–564–3394; facsimile: 202–565–0061; or e-mail: *julius.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

Effects of global change drivers differ by place and in scale, necessitating place-specific impacts information to enable stakeholders to respond appropriately. Place and scale also determine appropriate adaptation strategies and expected outcomes. This report is a synthesis of three watershed case-study assessments conducted by Global Change Research Program (GCRP) to advance the capability of managers to consider climate and land use change in watershed management decisions. The goal of this report is three-fold: (1) To understand the potential impacts of global changes and the availability of effective responses at the watershed scale across different geographic regions, (2) to learn how GCRP and other research programs might improve the process of conducting future assessments, and (3) to improve GCRP's and other research programs' understanding about effective ways to inject climate change impacts and adaptation information into decision-making processes. Toward that end, this report compares and contrasts methods and processes employed by the three case study teams to learn effective analytic, project management, and decision support approaches.

II. How to Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2007–0667, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* ORD.Docket@epa.gov.
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0667. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: 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 materials, such as copyrighted material, are 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: August 2, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–15675 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8453–1; Docket ID No. EPA–HQ–ORD–2007–0666]

Effects of Climate Change on Aquatic Invasive Species and Implications for Management and Research

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft

document titled, ''Effects of Climate Change on Aquatic Invasive Species and Implications for Management and Research'' (EPA/600/R–07/084). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA intends to consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins August 10, 2007, and ends September 10, 2007. Technical comments should be in writing and must be received by EPA by September 10, 2007.

ADDRESSES: The draft ''Effects of Climate Change on Aquatic Invasive Species and Implications for Management and Research'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff of the National Center for Environmental Assessment (NCEA–TIS). Please contact the Technical Information Staff by telephone at 202–564–3261 or by facsimile at 202–565–0050. If you are requesting a paper copy, please provide your name, your mailing address, and the draft document title, ''Effects of Climate Change on Aquatic Invasive Species and Implications for Management and Research.''

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Britta Bierwagen, NCEA, telephone: 202–564–3388; facsimile: 202–565–0061; or e-mail: *bierwagen.britta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This draft report addresses the potential effects of climate change on Aquatic Invasive Species (AIS) and consequences for their management, and describes apparent research gaps. The report is intended for managers and scientists working with AIS to provide them with information on the potential effects of climate change on AIS, strategies for adapting their management to accommodate these environmental changes, and highlight further research needs and gaps. The literature review that introduces this report shows that important progress has been made in identifying climate change effects on invasive species, but that our understanding of effects on specific species and interactions of other stressors needs to be improved. Following the literature review is an analysis of existing AIS management plans to assess the capacity of states to modify or adapt their management activities to account for climate change effects. The assessment shows that most states currently do not explicitly consider climate change in their aquatic invasive species management plans, but that many plans can incorporate new information on changing environmental conditions. Finally, this report compares information needs of AIS managers with current research to determine where gaps exist. Overall, more information and research are needed on many aspects of the effects of climate change on AIS.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2007–0666, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0666. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: August 2, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–15674 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8453–3; Docket ID No. EPA–HQ–ORD–2007–0665]

Preliminary Assessment of Climate Change Effects on Stream and River Biological Indicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, ''Preliminary Assessment of Climate Change Effects on Stream and River Biological Indicators'' (EPA/600/R–07/085). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA intends to consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins August 10, 2007, and ends September 10, 2007. Technical comments should be in writing and must be received by EPA by September 10, 2007.

ADDRESSES: The draft ''Preliminary Assessment of Climate Change Effects on Stream and River Biological Indicators'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff of the National Center for Environmental Assessment (NCEA–TIS). Please contact the Technical Information Staff by telephone at 202–564–3261 or by facsimile at 202–565–0050. If you are requesting a paper copy, please provide your name, your mailing address, and the draft document title, ''Preliminary Assessment of Climate Change Effects on Stream and River Biological Indicators.''

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Britta Bierwagen, NCEA, telephone: 202–564–3388; facsimile: 202–565–0061; or e-mail: *bierwagen.britta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This report describes projected effects of climate change on aquatic ecosystems and provides a preliminary analysis of possible effects on river and stream bioassessment programs. The report is intended for managers and scientists working on biological indicators, bioassessment, and biocriteria to provide them with information on the potential effects of climate change on indicator organisms used, initial strategies for adapting their programs to accommodate these environmental changes, and highlight possible next steps. The first step described in the report is an approach for identifying biological indicators sensitive to climate change; a case study next analyzes bioassessment data to detect possible climate change effects; and, finally, another analysis discusses methods for continuing to detect impairment under climate change. The results show that (1) Some biological indicators may be particularly sensitive to climate change; (2) depending on species loss rates, magnitude of temperature changes, and number samples, effects may be detected in 15 to 100 years; and (3) climate change effects may decrease the ability of states to discriminate between reference and impaired sites. The report concludes with recommendations for more in-depth assessments in different U.S. regions and further dissemination and coordination of information across EPA and states.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2007–0665, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0665. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: August 2, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–15676 Filed 8–9–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 07–147; FCC 07–125]

Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc.—Order to Show Cause and Notice of Opportunity for Hearing; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** on August 1, 2007, a summary of an Order to Show Cause and Notice of Opportunity for Hearing that sets for hearing a proceeding concerning whether Pendleton C. Waugh, Charles M. Austin, Jay R. Bishop, Preferred Communication Systems, Inc., and Preferred Acquisitions, Inc., violated the Commission's rules, whether forfeitures should be issued, and whether certain wireless licenses of Preferred Communication Systems, Inc., and Preferred Acquisitions, Inc., should be revoked. The summary that was published referenced ''EB Docket No. 07–143'' as the docket number for this matter. That reference was incorrect. This document corrects the docket number for this matter.

DATES: Effective on August 10, 2007.

FOR FURTHER INFORMATION CONTACT: Gary A. Oshinsky and Anjali K. Singh, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1420; and Jennifer A. Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1420.

SUPPLEMENTARY INFORMATION: The FCC published in the **Federal Register** on August 1, 2007, a summary of an Order to Show Cause and Notice of Opportunity for Hearing that sets for hearing a proceeding concerning whether Pendleton C. Waugh, Charles M. Austin, Jay R. Bishop, Preferred Communication Systems, Inc., and Preferred Acquisitions, Inc., violated the Commission's rules, whether forfeitures should be issued, and whether certain wireless licenses of Preferred Communication Systems, Inc., and Preferred Acquisitions, Inc., should be revoked. Inadvertently, the document contained an incorrect docket number, EB Docket No. 07–143. This amendment corrects that docket number.

In FR Doc. E7–14876, published on August 1, 2007, (72 FR 42088), on page 42088, make the following correction. On page 42088, in the second line of the header of the notice, change the docket number from EB Docket No. 07–143 to EB Docket No. 07–147.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15705 Filed 8–9–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2823]

Petition for Reconsideration of Action in Rulemaking Proceeding

August 1, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by August 27, 2007. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Sections 73.202(b), Table of Allotments, FM Broadcast Stations (Water Mill and Noyack, New York) (MB Docket No. 03–44).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15712 Filed 8–9–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First BanCapital Fund I, L.P., First BanCapital Parallel Fund I, L.P., CBCF Partners, L.P., MJR, LLC, MJR Financial Group, LLC, all of Bethlehem, Pennsylvania; to become bank holding companies by acquiring up to 54.9 percent of the voting shares of Revere Bank, Laurel, Maryland (in organization).

In connection with this application, Applicants also have applied to retain 8.28 percent of the voting shares of NCB Holdings, Inc., and indirectly hold an interest in New Century Bank, both of Chicago, Illinois; and thereby engage in investment advisory, securities brokerage, and private placement activities, pursuant to sections 225.28(b)(6)(i), (b)(7)(i), and (b)(7)(iii) of Regulation Y.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire up to 10 percent of the voting shares of Banner Corporation, and thereby indirectly acquire voting shares of Banner Bank, both of Walla Walla, Washington.

Board of Governors of the Federal Reserve System, August 6, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15596 Filed 8–9–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire up to 10 percent of the voting shares of BankFinancial Corporation, Burr Ridge, Illinois, and thereby indirectly acquire BankFinancial F.S.B., Olympia Fields, Illinois, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

2. FBOP Corporation, Oak Park, Illinois; to acquire up to 10 percent of the voting shares of CFS Bancorp, Inc., and thereby indirectly acquire Citizens Financial Bank, both of Munster, Indiana, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

3. FBOP Corporation, Oak Park, Illinois; to acquire up to 10 percent of the voting shares of Provident Financial Holdings, Inc., and thereby indirectly acquire Provident Savings Bank, F.S.B., both of Riverside, California, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

4. FBOP Corporation, Oak Park, Illinois; to acquire up to 10 percent of the voting shares of PFF Bancorp, Inc., Rancho Cucamonga, California, and thereby indirectly acquire PFF Bank and Trust, Pomona, California, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 6, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15592 Filed 8–9–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension; Correction

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice; correction.

SUMMARY: The FTC published a document in the **Federal Register** on August 7, 2007, seeking public comments on its proposals to extend: (1) The current Paperwork Reduction Act clearance for the information collection requirements contained in the Commission's Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions through November 30, 2010; and (2) the current Paperwork Reduction Act clearances for the information collection requirements contained in the Commission's Rule Governing Pre-Sale Availability of Written Warranty Terms and the Informal Dispute Settlement Procedures Rule through December 31, 2010. The document contained an incorrect weblink for submitting electronic comments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Allyson Himelfarb, Investigator, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–292, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2505.

Correction

In the **Federal Register** of August 7, 2007, in the FR Doc. E7–15328, on page 44140, in the third column, correct the **ADDRESSES** caption to read:

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Warranty Rules: Paperwork Comment, FTC File No. P044403'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H–135, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed

in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by using the following Weblink: *https://secure.commentworks.com/ftc-warrantypra* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Weblink: *https://secure.commentworks.com/ftc-warrantypra*. If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Richard C. Donohue,

Acting Secretary.

[FR Doc. E7–15695 Filed 8–9–07; 8:45 am]

BILLING CODE 6750–01–P

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public on both Wednesday, August 22 and Thursday, August 23, 2007.

DATES: The meeting will take place Wednesday, August 22, 2007 and Thursday, August 23, 2007 from 9 a.m. to 5 p.m.

ADDRESSES: Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Room 250, Rockville, MD 20852, (240) 453–8803, fax (240) 453–8456, e-mail *ACBSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: The ACBSA will discuss ethical considerations and risk benefits for ensuring transfusion and transplantation safety during focal periods of shortages. In addition the Committee will review and discuss the elasticity of the blood supply to support transfusion and transplantation safety as well as strategies and barriers to those strategies.

Public comment will be solicited on both August 22 and 23, 2007. Comments will be limited to five minutes per speaker. Anyone planning to comment is encouraged to contact the Executive Secretary at his/her earliest convenience. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business August 17, 2007. Likewise, those who wish to utilize electronic data projection to the Committee must submit their materials to the Executive Secretary prior to close of business August 17, 2007.

Dated: July 26, 2007.

Richard A. Henry,

Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E7–15682 Filed 8–9–07; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–118 and CMS–2088–92]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Quality Improvement (formerly Peer Review) Organization Contracts: Solicitation of Statements of Interest from In-State Organizations, General Notice and Supporting Regulations in 42 CFR, 475.102, 475.103, 475.104, 475.105, 475.106; *Use:* The criteria that an organization must satisfy in order to be eligible for a Medicare Quality Improvement Organization (QIO) contract are specified by law and set forth in Sections 1152 and 1153 of the Social Security Act (the Act). In very basic terms, the applicant organization must demonstrate that it is either a physician-sponsored or physician-access organization. The qualifications for in-State status for an otherwise qualified QIO organization are also set forth in Section 1153(i) (3) of the Act.

To comply with Section 1153 of the Act, we must publish the solicitation of statements of interest from qualified in-State organizations no later than January 31, 2008. We wish to publish notice of contract expiration dates and the time periods during which interested, qualified organizations may submit

statements of interest and proposals for these contracts substantially sooner than the January 2008 deadline, in order to give maximal notice and opportunity to all qualified and potentially interested organizations. We are soliciting information in the form of responses to our request for statements of interest from qualified in-State organizations who may wish to compete for the QIO contracts for their respective States. The responses should contain an indication of interest and information demonstrating the interested organizations' eligibility to qualify as a QIO under the requirements of Sections 1152 and 1153 of the Act. *Form Number:* CMS–R–118 (OMB#: 0938–0526); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 53; *Total Annual Responses:* 53; *Total Annual Hours:* 1.

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Provider Cost Report; *Use:* In accordance with sections 1815(a), 1833(e) and 1861(v)(1)(A)(ii) of the Social Security Act, providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. Section 42 CFR 413.20(b) requires that cost reports be required from providers on an annual basis. Such cost reports are required to be filed with the provider's fiscal intermediary. The CMS 2088–92 cost report is needed to determine the amount of reimbursable cost that is due these providers for furnishing medical services to Medicare beneficiaries. *Form Number:* CMS–2088–92 (OMB#: 0938–0037); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 623; *Total Annual Responses:* 623; *Total Annual Hours:* 62,300.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on October 9, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, *Attention:* William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 2, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–15681 Filed 8–9–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Awards to Eleven Office of Refugee Resettlement Shelter Care Providers

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Notice of grant awards.

CFDA #: 93.676.

SUMMARY: This notice is hereby given that awards will be made to eleven unaccompanied alien shelter care providers in the amount of $10,633,009. This funding will support services through September 30, 2007.

Grantee	Location	Project period	Amount (dollars)
The Children's Village	Dobbs Ferry, NY	10/1/04–9/30/09	405,415
Pioneer	Tacoma, WA	10/1/04–9/30/09	151,771
Southwest Key—Brownsville	Brownsville, TX	10/1/05–9/30/10	585,099
Southwest Key—Conroe	Houston, TX	10/1/05–9/30/10	666,590
Southwest Key—Mesa	Houston, TX	10/1/05–9/30/10	753,300
Lutheran Social Services of the South	El Paso, TX	10/1/05–9/30/10	2,318,670
Southwest Key—El Paso	El Paso, TX	10/1/05–9/30/10	1,526,590
Heartland/ICC	Chicago, IL	10/1/05–9/30/10	2,457,752
Southwest Key—Phoenix	Phoenix, AZ	10/1/05–9/30/10	634,810
International Educational Services—Foster Care	Harlingen, TX	3/1/06–2/28/11	245,567
Florence Crittenton	Fullerton, CA	3/1/06–2/28/11	887,445

This funding will support the expansion of shelter/foster care program bed capacity to meet the number of unaccompanied alien children referrals from the Department of Homeland Security (DHS).

The program is mandated by section 462 of the Homeland Security Act to ensure appropriate placement of all referrals from the DHS. ORR's ability to meet this mandate is often a challenge since the program is completely tied to DHS apprehension strategies and the sporadic number of border crossers. The program has seen a dramatic increase in the number of children referred from DHS in the past few months necessitating an expansion of existing shelter care capacity.

The program has very specific requirements for the provision of services. Existing grantees are the only entities with the infrastructure, licensing, experience and appropriate level of trained staff to meet the service requirements and the urgent need for expansion. The program's ability to avoid a backlog of children waiting in border patrol stations for placement can only be accommodated through the expansion of existing programs through this supplemental award process.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC, 20447, telephone (202) 401–4858.

Dated: August 7, 2007.

Kenneth Tota,

Chief of Operations, Office of Refugee Resettlement.

[FR Doc. E7–15726 Filed 8–9–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions andDelegation of Authority

Notice is hereby given that I have redelegated to the Director, Division of State Temporary Assistance for Needy Families (TANF) Policy with respect to State and territorial programs, and to the Director, Division of Tribal TANF Management with respect to tribal programs, the following authorities invested in me by the Director, Office of Family Assistance, in the memoranda dated April 17, 2007.

(a) Authorities Delegated

1. The authority to respond to general inquiries about established State and territorialTANF programs, territorial Adult Assistance Programs, and Tribal TANF and NativeEmployment Works (NEW) programs, to explain existing program policies for these programs, and to suggest referrals, when appropriate, to other government agencies and private organizations.
2. The authority to clarify and interpret existing Adult Assistance, TANF and NEW program policies and procedures affecting, where applicable, State, territorial, and tribal grantees.
3. The authority to deem State and territorial TANF plans as complete.
4. The authority to approve plans and amendments for the Tribal TANF and NEW programs.
5. The authority to provide and approve comments on State, territorial, and tribal corrective compliance plans submitted in response to a TANF penalty determination.
6. The authority to respond to inquiries about discretionary grants for the Tribal TANF—Child Welfare initiative.

(b) Limitations

1. This delegation of authority shall be exercised under the Department's existing policies on delegations and regulations.
2. The authority to respond to general inquiries relative to established State, territorial, and tribal programs or to inquire about specific grantee policies and operations requires notification to the appropriate TANF Regional Program Manager of the response given.
3. The authority to clarify and interpret existing program policies and procedures requires prior consultation with the Associate Director, TANF and the Director, OFA if such clarifications and interpretations are likely to have a significant impact on States, territories, and tribes or have political ramifications or be subject to adverse publicity.
4. The authority to deem State TANF plans as complete requires prior consultation with the appropriate TANF Regional Program Manager.
5. The authority to approve Tribal TANF and NEW plans and amendments requires prior consultation with the appropriate TANF Regional Program Manager.
6. The authority to provide and approve comments on State, territorial, and tribal corrective compliance plans requires prior consultation with the appropriate TANF Regional Program Manager.
7. The authority to respond to inquiries about discretionary grants for the Tribal TANF—Child Welfare initiative requires prior consultation with the Associate Director, TANF on any responses that establish a new precedent or have political implications.

(c) Effective Date

This delegation is effective upon the date of signature.

(d) Effect on Existing Delegations

This delegation of authority supersedes the February 10, 2003 delegations of authority to approve Tribal TANF and NEW plans to the Director, Division of Tribal TANF Management.

This delegation is in addition to the authority contained in the redelegation dated June 8, 2007 to the TANF Regional Program Managers.

I hereby affirm and ratify any actions taken by the Director, Division of State TANF Policy and the Director, Division of Tribal TANF Management, Office of Family Assistance, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Date: July 18, 2007.

Katherine Bradley,

Associate Director, TANF.

[FR Doc. E7–15721 Filed 8–9–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0105]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Environmental Impact Considerations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 2006 (71 FR 55484), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0322. The approval expires on January 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 6, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–15612 Filed 8–9–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0104]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief

Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 13, 2006 (71 FR 74924), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0530. The approval expires on May 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 6, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–15614 Filed 8–9–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Application for Participation in the IHS Scholarship Program

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–0006, ''Application for Participation in the IHS Scholarship Program.'' *Type of Information Collection Request:* Three-year extension, without change of currently approved information collection, 0917–0006, ''Application for Participation in the IHS Scholarship Program.'' *Form Number(s):* IHS–856, 856–2 through 856–8, IHS–815, IHS–816, IHS–817, IHS–818, D–02, F–02, F–04, G–02, G–04, H–07, H–08, J–04, J–05, K–03, K–04, and L–03. Reporting formats are contained in an IHS Scholarship Program application booklet. *Need and Use of Information Collection:* The IHS Scholarship Branch needs this information for program administration and uses the information to solicit, process, and award IHS Pre-graduate, Preparatory, and/or Health Professions Scholarship grants and monitor the academic performance of awardees and to place awardees at payback sites. The IHS Scholarship Program is streamlining the application to reduce the time needed by applicants to complete and provide the information. The IHS Scholarship Program plans on using information technology to make the application electronically available on the internet. *Affected Public:* Individuals, not-for-profit institutions and State, local or tribal government. *Type of Respondents:* Students pursuing health care professions.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instruments(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response *	Annual burden hours
Scholarship Application (IHS–856)	1500	1	1500	1.00 (60 min)	1500
Checklist (856–2)	1500	1	1500	0.13 (8 min)	195
Course Verification (856–3)	1500	1	1500	0.70 (42 min)	1050
Faculty/Employer Application (856–4)	1500	2	3000	0.83 (50 min)	2490
Justification (856–5)	1500	1	1500	0.75 (45 min)	1125
Federal Debt (856–6)	1500	1	1500	0.13 (8 min)	195
Job Experience (856–7)	25	1	25	0.83 (50 min)	21
Accept/Decline (856–8)	650	1	650	0.13 (8 min)	84
Receipt of Application (815)	1500	1	1500	0.03 (2 min)	45
Address Change Notice (816)	25	1	25	0.02 (1 min)	25
Scholarship Program Agreement (817)	850	1	850	0.05 (3 min)	43
Health Professions Contract (818)	650	1	650	0.05 (3 min)	33
Stipend Check (D–02)	100	1	100	0.13 (8 min)	13
Enrollment (F–02)	1300	1	1300	0.13 (8 min)	169
Academic Problem/Change (F–04)	50	1	50	0.13 (8 min)	6
Request Assistance (G–02)	217	1	217	0.13 (8 min)	28
Summer School (G–04)	193	1	193	0.10 (6 min)	19
Placement (H–07)	250	1	250	0.18 (11 min)	45
Graduation (H–08)	250	1	250	0.17 (10 min)	43
Site Preference (J–04)	150	1	150	0.13 (8 min)	20
Travel Reimb (J–05)	150	1	150	0.10 (6 min)	15
Status Report (K–03)	250	1	250	0.25 (15 min)	63
Preferred Assignment (K–04)	200	1	200	0.75 (45 min)	150
Request of Deferment (L–03)	20	1	20	0.13 (8 min)	3
Total	15,830				7,380

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d)

whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Mrs. Chris Rouleau, IHS Reports Clearance Officer, 801 Thompson Ave., Suite 450, Rockville, MD 20852–1601; call non-toll free (301) 443–5938; send via facsimile to (301) 443–2316; or send your e-mail requests, comments, and return address to: *Christina.Rouleau@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: August 3, 2007.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 07–3895 Filed 8–9–07; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Treatment for Cystic Fibrosis Cells and Other Reduced Cl − Conductance Cells

Description of Technology: Cystic fibrosis is the most common fatal genetic disease among Caucasians. It is caused by a defect in the cystic fibrosis transmembrane regulator (CFTR) protein. A normal CFTR transports chloride ions across the membrane of epithelial cells lining several organs in the body such as the lungs and the pancreas. The most debilitating consequence of the defective CFTR protein occurs in the lungs of cystic fibrosis patients, where insufficient chloride transport prevents water from exiting epithelial cells. This causes the lungs to produce abnormally thick, sticky mucus that clogs the airways and leads to fatal lung infections. Currently there is no cure for the disease. Present treatments result in undesired side effects such as cardiac, renal, and/or central nervous system tissue.

The NIH has developed a method of identifying cystic fibrosis transmembrane regulator binding compounds for treating cells having a reduced Cl − conductance, such as cystic fibrosis cells. It has also identified a compound, 1,3-Diallyl-8-cyclohexylxanthine (DAX), for potential treatment of cystic fibrosis. Because DAX has specificity in target areas of activity, treatment with this compound can potentially prevent all of the complications of cystic fibrosis including the production of abnormal mucus and without undesired side effects. DAX is active in extremely low concentrations.

Applications: Diagnostic; Therapeutic agent for the treatment of cells having a reduced Cl − conductance.

Market: This is intended for cystic fibrosis or other reduced Cl − conductance cells; Approximately 70,000 children and young adults worldwide, including 30,000 in the U.S. and 30,000 in Europe.

Development Status: Dr. Pollard has performed pre-clinical testing.

Inventors: Dr. Harvey B. Pollard and Dr. Kenneth A. Jacobson (NIDDK).

Publications:

1. N Arispe *et al.* ''Direct activation of cystic fibrosis transmembrane conductance regulator channels by 8–cyclopentyl–1,3–dipropylxanthine (CPX) and 1,3–diallyl–8–cyclohexylxanthine (DAX),'' *J Biol Chem.* 1998 Mar 6;273(10):5727–5734.

2. KA Jacobson, C Guay-Broder, PJM van Galen, C Gallo-Rodriguez, N Melman, O Eidelman, HB Pollard. ''Stimulation by alkylxanthines of chloride efflux in CFPAC-cells does not involve A_1-adenosine receptors,'' *Biochemistry*, 1995 Jul 18;34(28):9088–9094.

Patent Status:

U.S. Patent No. 5,877,179 issued 02 Mar 1999 (HHS Reference No. E–138–1992/1–US–01). This patent is for identifying binding compounds and composition of matter.

U.S. Patent No. 6,083,954 issued 04 Jul 2000 (HHS Reference No. E–138–1992/1–US–02). This patent is for treating CF.

Foreign patent rights available.

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Catherine A. Wendelken; 301/435–5282; *wendelkenc@od.nih.gov*.

Dated: August 3, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–15622 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Research Program Project on Hypertension in Youth.

Date: September 7, 2007.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Washington, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review

Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924. (301) 435–0280, *pattonh@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3899 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 a meeting of the National Heart, Lung, and Blood Advisory Council.

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 Heart, Lung, and Blood Advisory Council.

Date: September 12, 2007.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephen Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260 *mockrins@nhlbi.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3900 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee, Mtg 08–01, Review R03s, Fs, Ks.

Date: October 11–12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raj Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3901 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke 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 the discussions could disclose confidential trade secrets of 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 Advisory Neurological Disorders and Stroke Council.

Date: September 20–21, 2007.

Open: September 20, 2007, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research and other administratrive and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: September 21, 2007, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the 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 Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Baswis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 3, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3902 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel, Executive Function.

Date: August 22, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3903 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed 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: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: September 10–11, 2007.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza–Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Daniel F. McDonald, Phd, Scientific Review Administrator, Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: September 13–14, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Future.

Date: September 14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: September 17–18, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: September 20–21, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Steven B. Scholnick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *scholnis@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: September 24–25, 2007.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.

Date: September 24–25, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Miyako Hotel, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *forryscs@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: September 26–27, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, 301–435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic-Industrial Partnership for Cancer Imaging.

Date: September 28, 2007.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3898 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method for Treating Strokes by Inducing Tolerance to E-Selectin

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the inventions embodied in: U.S. Patent Application Numbers 60/206,693 filed May 24, 2000, 10/296,423 filed November 22, 2002 and corresponding foreign applications entitled ''Method for Preventing Strokes by Inducing Tolerance to E-Selectin'' and U.S. Patent Application Numbers 60/828,732 filed October 9, 2006 and 60/905,741 filed March 8, 2007 entitled ''Treatment and Prevention of Inflammation'' to Novavax, Inc., having a place of business in Rockville, Maryland. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to the use of E-selectin for the prevention or treatment of stroke.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 9, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Norbert J. Pontzer, J.D., PhD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5502; Facsimile: (301) 402–0220, E-mail: *pontzern@mail.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent application if not yet published.

SUPPLEMENTARY INFORMATION: This invention provides methods of treating or preventing brain damage in stroke through administration of E-selectin, an inducible adhesion molecule on endothelial cells. The expression of E-selectin is induced on human endothelium in response to activation by cytokines IL–1 and TNF. E-selectin mediates the adhesion of various leukocytes, including neutrophils, monocytes, eosinophils, natural killer cells, and a subset of T cells to activated endothelium. Activation of vascular endothelial cells by proinflammatory cytokines is believed to be involved in conversion of the luminal surface of endothelium from anticoagulant and anti-inflammatory to procoagulant and pro-inflammatory leading to thrombosis. Segmental vascular activation and thrombosis are involved in the development of strokes.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 3, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–15621 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Rehabilitation.

Date: August 16, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 3, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3904 Filed 8–9–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* August 10, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 2, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07–3842 Filed 8–9–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: August 30, 2007, at 9 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will include review of proposed work plan amendments and discussions about outreach and education activities and habitat protection.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E7–15727 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment; Trinity River National Wildlife Refuge, Located in Liberty County, TX

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southwest Region, intends to gather information necessary to prepare a CCP and EA for Trinity River National Wildlife Refuge (Refuge), pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Special mailings, newspaper articles, postings, and media announcements will inform people of opportunities for written input throughout the CCP planning process. Refuge fact sheets will be made available at local libraries in the surrounding communities. This notice of intent/public scoping process will continue until November 30, 2007. Written comments submitted by mail or e-mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical. Inquire at the following address for future dates of planning activities and due dates for comments.

ADDRESSES: Address comments and requests for more information to: Stuart Marcus, Refuge Manager, Trinity River National Wildlife Refuge, P.O. Box 10015, Liberty, Texas 77575; phone: 936–336–9786, fax: 936–336–9847. Information concerning this Refuge may also be found at the following Web site: *http://southwest.fws.gov.* Comments submitted via e-mail should be addressed to Yvette Truitt-Ortiz at *Yvette_TruittOrtiz@fws.gov* or *Stuart_Marcus@fws.gov.* Additionally, you may hand-deliver comments to Mr. Marcus at the Refuge, located approximately 48 miles east of Houston, Texas and 44 miles west of Beaumont, Texas on Highway 90. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law.

FOR FURTHER INFORMATION CONTACT: Yvette Truitt-Ortiz, Natural Resource Planner, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico 87103–1306; phone: 505–248–6452; fax 505–248–6874; e-mail *Yvette_TruittOrtiz@fws.gov*.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 requires that all lands within the National Wildlife Refuge System (NWRS) are to be managed in accordance with an approved CCP. The CCP guides

management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. Each refuge in the NWRS has specific purposes for which it was established. Those purposes are used to develop and prioritize management goals and objectives within the NWRS mission and to guide which public uses will occur on a given refuge.

The planning process will consider many elements, including wildlife and habitat management, habitat protection and acquisition, wilderness preservation, public recreational activities, and cultural resource protection. Public input into the planning process is essential. The planning process is a way for the Service and the public to evaluate refuge management goals and objectives for the best possible conservation efforts of this important wildlife habitat. Concurrently, this process is also providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Trinity River National Wildlife Refuge is located in Liberty County, Texas, and encompasses 22,000 acres of bottomland hardwood forest along a portion of the Trinity River in southeastern Texas. The Refuge, which is a remnant of what was once a much larger natural area is a broad, flat floodplain made up of numerous sloughs, oxbows lakes, artesian wells, and tributaries. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies for the conservation and development of these natural resources.

The Service, through this notice of intent, formally begins the comprehensive conservation planning process for Trinity River National Wildlife Refuge. The Service requests input on any and all issues concerning management or public recreation. Comments regarding the protection of threatened and/or endangered species, migratory birds, native species, and their habitats are encouraged.

The Service has provided the above questions for optional use only. Comments received will be used as part of the planning process. Individual comments will not be referenced in our reports or directly responded to. The Service will continue to solicit information from the public and other agencies via open houses, meetings, and written comments. Special mailings, newspaper releases, and announcements will continue to inform people of the time and place of opportunities for further input to the CCP.

Review of this project will be conducted in accordance with the National Environmental Policy act of 1968, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508) found at *http://www.thecrecom/fedlaw/default.htm*, other appropriate Federal laws, and Service policies and procedures for compliance with those regulations.

The Service will prepare an Environmental Assessment (EA) in accordance with procedures for implementing NEPA found in the Department of the Interior Manual (DM Part 516, Chap 6). The decision to prepare an Environmental Impact Statement instead of an EA would be contingent upon the complexity of issues following the scoping phase of the CCP process.

We estimate that the draft environmental documents will be available in fall 2009 for public review and comment.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 3, 2006.

Christopher T. Jones,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Editorial Note: This document was received at the Office of the **Federal Register** on August 7, 2007.

[FR Doc. E7–15710 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–5105–NX–SF13; Special Recreation Permit #NV–025–06–01]

Notice to the Public of Temporary Public Lands Closures and Prohibitions of Certain Activities on Public Lands Administered by the Bureau of Land Management (BLM), Winnemucca Field Office, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Certain lands located in northwestern Nevada partly within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area will be temporarily closed or restricted and certain activities will be temporarily prohibited in and around the site of the Burning Man event administered by the BLM Winnemucca Field Office in Pershing County, Nevada. These lands are referred to in this notice as the ''Event Area'' and the ''Public Closure Area,'' respectively. The specified closures, restrictions and prohibitions are made in the interest of public safety, to protect public resources, and to enable BLM law enforcement personnel to support State and local law enforcement agencies with enforcement of the law. The Burning Man event is authorized on public lands under a special recreation permit and is expected to attract approximately 40,000 participants this year.

DATES: From August 10, 2007 through September 17, 2007, inclusive, closures and restrictions affecting the following uses in the Public Closure and Event Area will occur: Public uses, public camping, aircraft landing, possession of alcohol by minors or open containers in vehicles, possession of firearms, discharge of weapons, procedures and circumstances for eviction of persons from public lands, waste water discharge, motor vehicle use, possession or use of fireworks, and ignition of fires. The timing and location of the uses prohibited and/or regulated are more fully set forth herein.

FOR FURTHER INFORMATION CONTACT: Dave Cooper, National Conservation Area Manager, Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445–2921, telephone: (775) 623–1500.

SUPPLEMENTARY INFORMATION: These closures are authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq*. In accordance with the applicable provisions of 43 U.S.C. 1733 any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

1. The public closure area is located within the following legally described locations:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
- Secs. 1 and 2, portion west of the east playa road;
- Sec. 3;
- Sec. 4, portion east of Washoe Co. Rd. 34;
- Sec. 5, E½, portion east of Washoe Co. Rd. 34;
- Sec. 10, N½;
- Sec. 11; E½, portion west of the east playa road.

Unsurveyed T. 33½ N., R. 24 E.,
- Secs. 25 and 26;

Sec. 28, portion east of the west playa road;
Sec. 33, portion east of Washoe Co. Rd. 34 and east of the west playa road;
Secs. 34, 35 and 36.
Unsurveyed T. 34 N., R. 24 E.,
Sec. 34, S½, portion east of the west playa road;
Sec. 35, portion east of the west playa road;
Sec. 36;
T. 33 N., R. 25 E.,
Sec. 4, Lots 3, 4 and 5; portions west of the east playa road.
Unsurveyed T. 34 N., R. 25 E.,
Sec. 33, SW¼.

1.1. Between August 10, 2007 and September 17, 2007 inclusive:

1.1.1. Public Use

Public use is prohibited except as provided within the event area as described below.

1.1.2. Public Camping

Public camping is prohibited except as provided within the event area as described below.

1.1.3. Aircraft Landing

Aircraft as defined in Title 18, U.S.C., section 31 (a)(1) and includes lighter-than-air craft, ultra-light craft, and remotely controlled powered craft are prohibited from landing, taking off, or taxiing. The following exceptions apply:

- Aircraft operations conducted through the authorized event landing strip and such ultra-light and helicopter take-off and landing areas designated for Burning Man event staff and participants, law enforcement, and emergency medical services.
- Emergency aircraft such as Care Flight, Sheriff's Office, or Medical Ambulance Transport System helicopters engaged in official business may land in other locations when circumstances require it.
- Landings or take-offs of lighter-than-air craft previously approved by the BLM authorized officer.

1.1.4. Possession of Alcohol

- Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion is prohibited.
- Definitions:

○ Open container—any bottle can or other container which contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container.

○ Possession of an open container—includes any open container which is physically possessed by the driver or operator, or which is adjacent to and reachable by that driver or operator. This includes containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

- Possession of alcohol by minors is prohibited.

○ The following are prohibited:

■ Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

■ Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

○ This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

1.1.5. Weapons

Discharge and possession of firearms is prohibited. Law enforcement officers acting in their official capacity are exempted from the prohibition.

1.1.6. Eviction of Persons From Public Closure Area

The permitted event area and all other parts of the public closure area are closed to any person who:

a. Has been evicted from the event by the permit holder, Black Rock City LLC, whether or not such eviction was requested by BLM.

b. Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

Any person evicted from the event forfeits any privileges to be present within the perimeter fence or anywhere else within the public closure area even if they possess a ticket to attend the event.

Permit holder BRC LLC and BLM law enforcement officers may evict event ticket holders for ''just cause'' and the event ticket holder must immediately depart from the event public closure area and not return to the event public closure area during the closure period.

Just cause includes, but is not limited to:

a. Repeated violations of any permit stipulations, closure orders or regulations in Title 43 CFR;

b. Commission of an assault, fight, threatening, menacing, or similar conduct that is likely to inflict injury or incite an immediate breach of the peace;

c. Possession of prohibited weapons;

d. Persons returning to the event after they have been arrested by an event law enforcement officer, transported to a jail facility and released from custody on bail. (Note: persons returning after being arrested and released will be allowed to re-enter event only to obtain personal property under the escort of law enforcement officers and/or BRC LLC staff.)

e. Persons cited and released for a criminal offense by BLM and/or the Pershing County Sheriff's Office (PCSO) whose identity information received from the subject cannot be verified through personal possession of ID/documents, identity data base checks or telephonic verification from a credible person not at the event.

1.1.7. Waste Water Discharge

Dumping wastewater (grey or black) is prohibited.

1.2. Between August 24, 2007 and September 3, 2007 inclusive:

1.2.1. Public Camping

Public camping is prohibited. Burning Man event ticket holders and BLM authorized event management-related camps within the event area as described below are exempt from the camping closure.

1.2.2. Motorized Vehicles

Motor vehicle use is prohibited. The following exceptions apply: participant arrival and departure on designated routes; vehicles registered with Burning Man; Black Rock City LLC staff and support; BLM, medical, law enforcement, and firefighting vehicles; and motorized skateboards and scooters with or without handlebars.

Vehicles must be registered with Black Rock City LLC and drivers must display evidence of registration at all times. Such registration must be displayed so that it is visible to the rear of the vehicle while it is in motion.

Vehicle use that creates a dust plume higher than the top of the vehicle is prohibited.

1.2.3. Fireworks

The use, sale or possession of personal fireworks within the public closure area is prohibited.

The following exceptions apply: Uses of fireworks approved by Black Rock City LLC and used as part of an official Burning Man art burn event.

1.2.4. Fires

The ignition of fires on the surface of the Black Rock Playa without a burn blanket or burn pan is prohibited. The following exceptions apply: Registered Burning Man art burn events, licensed mutant vehicles, and portable barbeques, grills or elevated torches or lanterns.

2. The Event Area is located within the following legally described locations:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
- Secs. 1 and 2; the area within the event perimeter fence, within 50 yards outside the fence, and the aircraft parking area;
- Sec. 3, the area within the event perimeter fence, within 50 yards outside the fence, and within 50 yards of the event entrance road;

Unsurveyed T. 33½ N., R. 24 E.,
- Secs. 25, 26 and 27, areas within the event perimeter fence and within 50 yards outside the fence;
- Sec. 34, areas within the event perimeter fence and within 50 yards outside the fence;
- Sec. 35;
- Sec. 36, areas within the event perimeter fence and within 50 yards outside the fence.

Unsurveyed T. 34 N., R. 24 E.,
- Secs. 34, 35 and 36, areas within the event perimeter fence and within 50 yards outside the fence.

2.1. Between August 10, 2007 and August 25 and between September 4 and September 17, 2007 inclusive:

2.1.1. Camping

Public camping is prohibited. Black Rock City LLC authorized staff, contractors, and others authorized to assist with construction or clean-up of art exhibits and theme camps are exempt from the camping closure.

2.2. Between August 24, 2007 and September 3, 2007 inclusive:

2.2.1. Public Use

No person shall be present within the event area unless that person: possesses a valid ticket to attend the event; is an employee or authorized volunteer with the BLM, a law enforcement agency, emergency medical service provider, fire protection provider, or another public agency working at the event and the employee is assigned to the event; or is a person working at or attending the event on behalf of the event organizers, BRC LLC.

2.2.2. Weapons

Possession of weapons is prohibited, subject to the following exceptions: County, state, tribal and federal law enforcement personnel, or any person authorized by federal law to possess a weapon.

''Weapon'' means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand throwable spear, sling shot, irritant gas device, explosive device or any other implement designed to discharge missiles, and includes any weapon the possession of which is prohibited by state law.

2.2.3. Public Camping

Public camping is prohibited. Burning Man event ticket holders who are camped in designated areas provided by Black Rock City LLC and ticket holders who are camped in the authorized ''pilot camp'' and BLM authorized event management-related camps are exempt from the camping closure. Black Rock City LLC authorized staff, contractors, and other authorized participants are exempt from the camping closure.

Dated: July 23, 2007.

Gail G. Givens,

Field Manager.

[FR Doc. E7–15616 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–6350–DP–047H; HAG–07–0140]

Notice of Availability of the Draft Environmental Impact Statement for the Revision of Resource Management Plans of the Western Oregon Bureau of Land Management Districts

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act, the Federal Land Policy and Management Act, and the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands Act (O&C Lands Act), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS) to revise selected portions of the 1995 Resource Management Plans (RMPs) for six BLM districts in western Oregon. These revisions will address the sustained yield timber production provisions of the O&C Lands Act as well as resource protection provisions of the Endangered Species Act and the Clean Water Act. The alternatives in the DRMP/DEIS also comply with the 2003 settlement agreement between the Secretary of the Interior and the American Forest Resource Council (*AFRC, et al* v. *Clarke*).

DATES: The 90-day public comment period on the DRMP/DEIS will begin the date the Environmental Protection Agency publishes their Notice of Availability (NOA) in the **Federal Register**. Comments must be received on or before the end of the comment period at the address listed below. Public meetings to gather comments on the DRMP/DEIS will be held in a number of locations throughout the western Oregon planning area. Public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, newsletter mailings, and on the Western Oregon Plan Revisions Web site at: *www.blm.gov/or/plans/wopr/index.php.*

ADDRESSES: To request paper or compact disc copies of the document, contact: the BLM's Western Oregon Plan Revisions Team, 333 SW. First Avenue, P.O. Box 2965, Portland, Oregon 97208; fax: (503) 808–6630 (please address fax to: ''Western Oregon Plan Revisions DEIS''). The DRMP/DEIS may also be accessed on line at: *http://www.blm.gov/or/plans/wopr/index.php.* Copies of the DRMP/DEIS will also be available for inspection at public libraries and BLM offices in western Oregon.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Western Oregon Plan Revisions Public Outreach Coordinator; telephone (503) 808–6629; or e-mail: orwopr@or.blm.gov

SUPPLEMENTARY INFORMATION: The DRMP/DEIS for the Revision of Resource Management Plans of the Western Oregon BLM Districts has developed and analyzed four alternatives (including the No Action Alternative) for managing approximately 2,550,000 acres of Federal land, mostly revested Oregon and California Railroad and Coos Bay Wagon Road Grant lands, within the Western Oregon planning area. BLM has analyzed revision of six RMPs with this single EIS. The RMPs being revised are the Salem, Eugene, Roseburg, Medford, and Coos Bay District RMPs and the Klamath Falls Resource Area RMP in the Lakeview District.

Public comments received during scoping played an important role in shaping the alternatives, which are described and analyzed in the DRMP/DEIS.

The No Action Alternative maintains the decisions in the existing RMPs. Alternative One creates late-successional management areas similar to the large late-successional reserves in the no action alternative, applies new criteria for designating the width of riparian management areas, and provides for intensive forest management on other areas.

Alternative Two designates late successional management areas based on habitat requirements for the northern spotted owl and marbled murrelet,

applies new criteria for designating the width of riparian management areas, and provides for intensive timber management on other areas.

Alternative Three manages most of the land base for timber production under long (240–360 years, depending on the area) rotations, or uneven-aged management in fire-prone ecosystems, in order to provide late-successional habitat across the landscape. Six sub-alternatives, which are variations of the three action alternatives, are also analyzed.

The major resource management plan issues include:

- Providing a sustainable supply of wood and other forest products as mandated by the O&C Lands Act, while also meeting other applicable laws.
- Providing for conservation of species listed under the Endangered Species Act.
- Contributing to meeting the goals of the Clean Water Act and the Safe Drinking Water Act.
- Reducing the risk of wildfire and integrating fire back into the ecosystem.

The preferred alternative designates 93 of the 124 existing and potential Areas of Critical Environmental Concern (ACEC) considered in detail. Many of the ACECs are also designated Research Natural Areas (RNA) or Outstanding Natural Areas (ONA).

In the Salem District, 19 existing ACECs are carried forward from the Salem District RMP: Crabtree Complex RNA/ONA (1,231 acres); Elk Creek (784 acres); Forest Peak RNA (155 acres); Grass Mountain RNA (930 acres); High Peak—Moon Creek RNA (1,490 acres); Jackson Bend (15 acres); Little Sink (81 acres); Lost Prairie (61 acres); Marys Peak ONA (353 acres); Middle Santiam Terrace (182 acres); Nestucca River (1,163); Rickreall Ridge (368 acres); Saddleback Mountain RNA (300 acres); Sandy River Gorge ONA (9,780 acres); The Butte RNA (39 acres); Valley of the Giants ONA (1,311 acres); Walker Flat (11 acres); Yampo (13 acres); and Yaquina Head ONA (91 acres). Five existing ACECs are not carried forward from the Salem District RMP: North Santiam (15 acres); Soosap Meadows (343 acres); White Rock Fen (55 acres); Wilhoit Springs (133 acres); and Williams Lake (90 acres). Six potential ACECs are designated: Little North Fork Wilson River (1,822 acres); Marys Peak B (75 acres); Mill Creek Ridge (114 acres); Molalla Meadows (205 acres); Silt Creek (140 acres); and Waterloo (9 acres). Five potential ACECs are not designated: Beaver Creek (44 acres); Lower Scappoose Eagle (179 acres); McCully Mountain (101 acres); Snow Peak (1,667 acres); and Wells Island (73 acres).

In the Eugene District, 9 existing ACECs are carried forward from the Eugene District RMP: Camas Swale RNA (308 acres); Cottage Grove Lake RFI (15 acres); Fox Hollow RNA (159 acres); Grassy Mountain (74 acres); Heceta Sand Dunes ONA (210 acres); Horse Rock Ridge RNA (378 acres); Hult Marsh (177 acres); Mohawk RNA (290 acres); and Upper Elk Meadows RNA (217 acres). Three existing ACECs are not carried forward from the Eugene District RMP: Coburg Hills RFI (855 acres); Cougar Mountain Yew Grove (90 acres); and Dorena Lake RFI (18 acres). Six potential ACECs are designated: Dorena Prairie (8 acres); Esmond Lake (86 acres); Lorane Ponderosa Pine (104 acres); McGowan Meadow (75 acres); Oak Basin Prairies (223 acres); and Willamette Valley Prairie/Oak and Pine Area (1,486 acres). Two potential ACECs are not designated: Low Elevation Headwaters of the McKenzie River (9,765 acres); and Taylor Creek (155 acres).

In the Roseburg District, 8 existing ACECs are carried forward from the Roseburg District RMP: Bear Gulch RNA (351 acres); Beatty Creek RNA (864 acres); Bushnell-Irwin Rocks RNA (1,085 acres); Myrtle Island RNA (19 acres); North Bank (6,162 acres); North Myrtle Creek RNA (453 acres); Red Pond RNA (141 acres); and Tater Hill RNA (303 acres). Two existing ACECs are not carried forward from the Roseburg RMP: North Umpqua River (1,791 acres); and Umpqua River Wildlife Area (855 acres). One potential ACEC is designated: Callahan Meadows (34 acres). Two potential ACECs are not designated: China Ditch (60 acres); and Stouts Creek (64 acres).

In the Coos Bay District, 9 existing ACECs are carried forward from the Coos Bay RMP: Cherry Creek RNA (592 acres); China Wall (302 acres); Hunter Creek Bog (721 acres); New River (876 acres); North Fork Chetco (603 acres); North Fork Coquille River (311 acres); North Fork Hunter Creek (1,757 acres); North Spit (682 acres); and Tioga Creek (42 acres). Two existing ACECs are not carried forward from the Coos Bay RMP: Upper Rock Creek (472 acres); and Wassen Creek (3,394 acres). Three potential ACECs are designated: Rocky Peak (1,827 acres); Roman Nose (205 acres); and Steel Creek (1,381 acres). Two potential ACECs are not designated: Brownson Ridge (399 acres); and Euphoria Ridge (241 acres). In the Medford District, 18 existing ACECs are carried forward from the Medford RMP: Bobby Creek RNA (1,915 acres); Brewer Spruce RNA (1,707 acres); Crooks Creek (147 acres); Eight Dollar Mountain (1,249 acres); French Flat (651 acres); Grayback Glades RNA (1,022 acres); Holton Creek RNA (421 acres); King Mountain Rock Garden (68 acres); Lost Lake RNA (387 acres); North Fork Silver Creek RNA (499 acres); Oregon Gulch RNA (1,051 acres); Pipe Fork RNA (516 acres); Poverty Flat (29 acres); Rough and Ready (1,189 acres); Round Top Butte RNA (605 acres); Scotch Creek RNA (1,799 acres); Table Rocks ONA (1,244 acres); and Woodcock Bog RNA (265 acres). Six existing ACECs are not carried forward from the Medford RMP: Baker Cypress (11 acres); Hole-In-The-Rock (63 acres); Hoxie Creek (255 acres); Moon Prairie (92 acres); Sterling Mine Ditch (143 acres); and Tin Cup (83 acres). Five potential ACECs are designated: Cobleigh Road (261 acres); Dakubetede Wildland (1,796 acres); East Fork Whiskey Creek (3,188 acres); Pickett Creek (32 acres); and Waldo-Takilma (1,760 acres). Two potential ACECs are not designated: Long Gulch (1,020 acres); and Reeves Creek (117 acres).

In the Klamath Falls Resource Area of the Lakeview District, 5 existing ACECs are carried forward from the Klamath Falls RMP: Miller Creek (939 acres); Old Baldy RNA (355 acres); Upper Klamath River (5,092 acres); Wood River Wetland (3,225 acres); and Yainax Butte (707 acres). Four potential ACECs are designated: Bumpheads (112 acres); Four Mile Wetland (1,173 acres); Tunnel Creek (72 acres); and Upper Klamath River Addition (910 acres).

Detailed information on resource use limitations for each ACEC is contained in Chapter 2 and Appendix M of the DRMP/DEIS.

Comments and information submitted on the DRMP/DEIS, including names, e-mail addresses, and street addresses of respondents, will be available for public review and disclosure at the above address. 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.

Edward W. Shepard,

State Director, OR/WA, USDI Bureau of Land Management.

[FR Doc. 07–3906 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–400–1110–CB–241A]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting and Recreation Subcommittee Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting,

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) and Recreation RAC Subcommittee will meet as indicated below.

DATES: September 10, 2007. The meeting will start at 10 a.m. and end no later than 4 p.m. The public comment period will be from 1 p.m. to 1:30 p.m. The meeting will be held at the McKay Bend Campground located in Myrtle, Idaho (15 miles east of Lewiston, Idaho on the Clearwater River).

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone (208) 769–5014.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topics: Forest Service and BLM recreation fee proposals (Recreation RAC Subcommittee) and a report from the Salmon River Working Group subcommittee (RAC). Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/rac/id/id_index.htm*.

All meetings are open to the public. The public may present written comments to the Council in advance of or at the meeting. Each formal Council meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: August 6, 2007.

Jenifer L. Arnold,

Acting District Manager.

[FR Doc. E7–15707 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100 5882 RD 50; HAG 07–0155]

Roseburg District Resource Advisory Committee: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Roseburg District Resource Advisory Committee.

Time and Date: 9 a.m. August 20, 2007; 9 a.m. September 17, 2007; 9 a.m. September 24, 2007.

Place: Roseburg District Office, 777 NW., Garden Valley Blvd., Roseburg, Oregon 97470.

Status: Open to the public; a public comment period will be provided.

Matters to be Considered: The Resource Advisory Committee will consider proposed projects for Title II funding that focus on maintaining or restoring water quality, land health, forest ecosystems, and infrastructure.

Contact Person for More Information: Program information, meeting records and a roster of Committee members may be obtained from Jake Winn, Restoration Coordinator, 777 NW., Garden Valley Blvd., Roseburg, Oregon 97470; (541) 464–3275.

Should you require reasonable accommodation, please contact the BLM Roseburg District at (440) 440–4940 as soon as possible.

Jay Carlson,

District Manager.

[FR Doc. 07–3905 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 14340]

Public Land Order No. 7679; Extension of Public Land Order No. 6652; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6652 for an additional 20-year period. This extension is necessary to continue protection of the Petersburg Administrative Site in Siskiyou County.

DATES: *Effective Dates:* July 22, 2007.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM, California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4675.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6652 (52 FR 27552), which withdrew 30 acres of National Forest System land within the Klamath National Forest from the mining laws to protect the Petersburg Administrative Site, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6652 will expire on July 21, 2027, unless, as a result of a review conducted prior to the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: July 3, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–15623 Filed 8–9–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Interior

[CA680–1220–FU]

Notice of Intent To Collect Fees on Public Land in San Bernardino County, CA Under the Federal Lands Recreation Enhancement Act (REA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Collect Fees on Public Land in the El Mirage Cooperative Management Area, in San Bernardino County, California.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), 16 U.S.C. 6801 *et seq.*, the Bureau of Land Management's (BLM) Barstow Field Office proposes to begin collecting fees in fiscal year 2008 at the El Mirage Cooperative Management Area in San Bernardino County, California. (SBBM, T.7N., R.7W., Sec. 11 through 14, 22

through 28, 33 through 36, SBBM, T.7N., R.6W., Sec. 18 through 24, 26 through 34, SBBM, T.6N., R.7W., Sec. 1 through 4, 12, SBBM, T.6N., R.6W., Sec. 4 through 9).

DATES: The public is encouraged to participate during the public comment period that will expire 30 days after publication of this notice in the **Federal Register**. Effective six months after the publication of this notice, the BLM's Barstow Field Office would initiate fee collection in the El Mirage Cooperative Management Area, unless the BLM publishes a **Federal Register** notice to the contrary. The Pacific Southwest Region Recreation Resource Advisory Committee (RRAC) will review the new fee well in advance of the proposed initiation date. Future adjustments in the fee amount will be modified in accordance with the BLM Barstow Field Office Business Plan, consultation with the Pacific Southwest Region RRAC, and other public notices prior to a fee increase.

ADDRESSES: Mail: Field Manager, Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

FOR FURTHER INFORMATION CONTACT: Roxie C. Trost, Field Manager, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

SUPPLEMENTARY INFORMATION: The El Mirage Cooperative Management Area qualifies as a site wherein visitors can be charged a ''Special Recreation Permit Fee'' authorized under section 3(h) of the Federal Lands Recreation and Enhancement Act (REA), 16 U.S.C. 6801 *et seq.* In accordance with REA, and implementing regulations at 43 CFR Part 2930, visitors participating in OHV use (e.g., 4-wheel drive vehicles, ATVs, motorcycles, quads, wind sails), would purchase a Special Recreation Permit (SRP) to operate their vehicle within the cooperative use area. The operators of each primary entry vehicle operating within the recreation area would be required to purchase and display the permit. Permits would expire on September 30 following issuance, regardless of when the permit was purchased. An opportunity to purchase an individual SRP pass either for the day or for a 7-day period would be available onsite to facilitate less frequent users. The BLM provides individual special recreation permits for management of special areas as specified in 43 CFR 2932.11. and in REA under section 3(h). The America the Beautiful—The National Parks and Federal Recreational Lands Pass (*i.e.,* the Interagency Annual Pass, Interagency Senior Pass, Interagency Access Pass, and Interagency Volunteer Pass) would not be honored and do not apply to the SRP fee. The National Parks Pass with Golden Eagle Hologram, Golden Eagle, Golden Age, and Golden Access Passports would also not be honored and do not apply to the SRP fee. The El Mirage Cooperative Management Area is a popular off-highway vehicle recreation area offering significant opportunities for outdoor recreation and has received substantial Federal investment. The BLM's commitment is to find the proper balance between public use and the protection of resources. The BLM's policy is to collect fees at all specialized recreation sites, or where the BLM at Federal expense provides facilities, equipment or services in connection with outdoor use. In an effort to meet increasing demands for services and maintenance of existing facilities, routes and trails, the BLM would implement a fee program for the El Mirage Cooperative Management Area. The BLM's mission for the El Mirage Cooperative Management Fee Collection Project (Project) is to ensure that funding is available to maintain existing facilities and recreational opportunities, to provide for law enforcement presence, to develop additional services, and to protect resources. This mission entails communication with those who will be most directly affected by the Project, including recreationists, other recreation providers, neighbors, and those who will have a stake in solving concerns that may arise throughout the life of the Project, such as elected officials and other agencies.

On August 24, 1990, the BLM published the final Management Plan and Environmental Assessment (EA) for the El Mirage Cooperative Management Area. This Management Plan and EA considered various ways to minimize the potential for resource damage from authorized uses, including cross-country OHV use. The BLM signed a decision record for this EA on January 19, 1990 and subsequently signed a Decision Record approving the proposed action in the Management Plan on June 29, 1990. The County of San Bernardino, County of Los Angeles, and California Off-Highway Motor Vehicle Recreation Commission and Division, as cooperators to the El Mirage Cooperative Management Area, signed their concurrence with the actions in the Management Plan in June 1990.

In December 2004, REA was signed into law. REA provides authority for 10 years for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees, including a requirement that Recreation Resource Advisory Committees or Councils have the opportunity to make recommendations regarding establishment of such fees. REA also directs the Secretaries of the Interior and Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions.

The 1990 Management Plan allows for recreation opportunities, the issuance of use permits, and the charging of fees for each primary vehicle for use of the El Mirage Cooperative Management Area. The Barstow Field Office Business Plan prepared pursuant to REA and BLM recreation fee program policy also addresses the establishment of a permit process and the collection of user fees. This Business Plan, in conjunction with the Management Plan, establishes the rationale for charging recreation fees. In accordance with the BLM recreation fee program policy, the Business Plan explains the fee collection process, and outlines how the fees will be used at the El Mirage Cooperative Management Area. The BLM has notified and involved the public at each stage of the planning process, including the proposal to collect fees. Fee amounts will be posted on-site, and at the Barstow Field Office, and copies of the Business Plan will be available at the Barstow Field Office and the BLM California State Office.

The BLM welcomes public comments on this proposal. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803(b); 43 CFR 2932.13.

Roxie C. Trost,

Field Manager, Barstow Field Office.

[FR Doc. E7–15618 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB #1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 10, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Susan Johnson, Air Resources Division, NPS, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225; or electronically at *Susan_Johnson@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Johnson, Air Resources Division, NPS, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225; or via phone at 303/987–6694; or via fax at 303/969–2822; or via e-mail address at *Susan_Johnson@nps.gov.* You are entitled to a copy of the entire ICR package free-of-charge.

The NPS published a 60-Day Notice to solicit public comments on this ICR in the **Federal Register** on October 10, 2006 (Vol. 71, No. 195, Pages 59521–59522). The comment period closed on December 11, 2006. The NPS received one comment as a result of the publication of this 60-Day **Federal Register** Notice.

Comment: The commenter questioned why the visibility study was necessary. The commenter noted that regulations that protect air quality are already in place, but are not stringent enough or inadequately enforced. The commenter also added that the most important air quality-related issue is human health, particularly the health of children.

Response: Regulations to protect and improve air quality are currently in place, and new regulations may be proposed in the future. Periodic economic information is necessary to determine whether these regulations are efficient. Visibility is a valued component of air quality, but current information is outdated, and lacks the benefit of recent advances in measuring such values. The information proposed in this collection will assist regulators in making better-informed air policy decisions. Human health related issues are outside the purview of this proposed effort, but are well recognized as the predominant economic benefit of improved air quality.

SUPPLEMENTARY INFORMATION:

Title: Visibility Valuation in National Parks and Wilderness Areas: Pre-Test and Pilot Test.

Bureau Form Number(s): None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New Collection.

Description of Need: The Clean Air Act includes provisions designed to maintain and enhance visibility at national parks and wilderness areas (Sections 169A, 169B, and 110(a)(2)(j)). The NPS is directed by its Organic Act to ''conserve the scenery * * * unimpaired for the enjoyment of future generations'' (16 U.S.C. 1) and the Clean Air Act charges the NPS with an ''affirmative responsibility to protect air quality related values (including visibility)'' (42 U.S.C. 7475(d)(2)(B)). Therefore, the NPS believes it is imperative that the value of visibility changes is adequately represented in cost-benefit analyses related to State and Federal efforts that may affect visibility (including the Regional Haze Rule, 40 CFR Part 51). Although several studies were conducted to estimate visibility benefits in the 1970s and 1980s, methodologies for estimating the benefits of improvements in environmental goods have advanced signifcantly since that time. Furthermore, baseline visibility conditions in national parks and wilderness areas have changed significantly over the last few decades. As a result, updated estimates of benefits are required.

Current evaluation of Federal and state air quality legislation or regulations, as well as regional plans or policies that impact NPS-managed areas, is based on virility valuation information in Chestnut and Rowe, 1990 (e.g., see EPA, 2005). The vintage of this study aside, several limitations have been identified by regulators and stakeholders alike, including its limited sample frame (EPA, 2005; Leggett et al., 2004). Thus, the NPS seeks current visibility valuation information that will permit accurate evaluation of programs and policies affecting visibility in NPS-managed areas.

The NPS plans to conduct a nationwide stated preference survey to estimate the value of visibility changes in national parks and wilderness areas. Stated-preference surveys use carefully designed questions to elicit respondents' willingness to pay for improvements in environmental quality. A general population stated-preference survey is required in this case, as many U.S. citizens may be willing to pay to improve visibility at national parks and wilderness areas, even if they do not use these areas. Stated-preference surveys are the only methodology available to estimate these non-use values. But to ensure that the nationwide survey is unbiased and readily understood by respondents, and that the likely effect of non-response on benefit estimates is known, the pre-test and pilot test must first be conducted.

The pre-testing will be done through focus groups, which will be used to develop and refine a survey instrument for the pilot study. Twelve focus groups will be conducted, with approximately 10 participants in each group (120 in total). Thus, a sufficient number of responses will be gathered to evaluate the information presentation, reliability, internal consistency, response variability, and other properties of the draft survey. Results will be used to make improvements to the survey instrument. NPS will proceed iteratively, modifying the draft survey instrument after each focus group to ensure that the wording of the questions is clear and unbiased, and effectively address the relevant issues.

The pilot study will be designed to account for the potential impact of mail survey non-response on benefit estimates. The pilot study will involve a split-sample comparison between a mail and in-person survey. Respondents will be asked to complete the survey instrument developed during the pre-testing stage. The results will ultimately be used to adjust the benefit estimates obtained in the nationwide survey for potential non-response bias. The final content of the pilot survey instrument will depend on the pre-testing results. At a minimum, the survey will describe the characteristics of various visibility improvement programs and ask respondents to select a preferred program. The survey will also include socio-demographic questions and questions designed to evaluate the respondents' motivation in selecting a preferred program. Surveys will be conducted with approximately 800 individuals.

For this pilot study, 16 neighborhoods will be selected in two metropolitan areas (Phoenix, AZ and Syracuse, NY). Each neighborhood sample will be split into two groups, with 50 households assigned to a mail survey group and 50 households assigned to an in-person survey group. The in-person survey will be conducted in a manner that minimizes the differences between the two survey modes.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of collection: Once.

Description of Respondents: Residents of Atlanta, GA, Chicago, IL, Sacramento, CA (focus groups) and Phoenix, AZ and Syracuse, NY (response rate pilot study).

Estimated average number or respondents: Focus groups: 1,200 in recruitment and 120 in pre-testing activities. Pilot study: 480 mail refusals, 320 in-person refusals, and 800 respondents.

Estimated average number of responses: 920 (120 responses for focus groups; 800 responses for pilot study).

Estimated average time burden per respondent: 2.5 hours for focus group respondents, 20 minutes for pilot survey respondents.

Frequency of response: 1 time per respondent.

Estimated total annual reporting burden: 567 hours.

Dated: July 12, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–3916 Filed 8–9–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Dates and Addresses: The AMWG will conduct the following public meeting:

Flagstaff, Arizona—August 29–30, 2007. The meeting will begin at 9:30 a.m. and conclude at 5:30 p.m. on the first day and begin at 8 a.m. and conclude at 4 p.m. on the second day. The meeting will be held at the Grand Canyon Monitoring and Research Center, 2255 N. Gemini Drive, Building 3 Main Conference Room, Flagstaff, Arizona.

Agenda: The purpose of the meeting will be to (1) Review and develop a recommendation to the Secretary of the Interior for the fiscal year 2008 Budget, Workplan, and hydrograph; (2) receive updates on the Monitoring and Research Plan, the Beach/Habitat Building Flow Science Plan, public outreach efforts, Long-Term Experimental Plan Environmental Impact Study, and Humpback Chub Recovery Implementation Plan; (3) review fiscal year 2007 mid-year program expenditures; (4) discuss the Roles Ad Hoc Group Report; and (5) discuss basin hydrology/climate changes, and other administrative and resource issues pertaining to the AMP. To view a copy of the draft agenda, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/07aug29/index.html.*

FOR FURTHER INFORMATION CONTACT: Randall Peterson, Bureau of Reclamation, telephone (801) 524–3758; facsimile (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov.*

To allow full consideration of information by the AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Uta 84138; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

Dated: July 19, 2007.

Randall V. Peterson,

Manager, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E7–15699 Filed 8–9–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of Draft Programmatic Environmental Impact Statement, Improvements to the USIBWC Rio Grande Flood Control Projects Along the Texas-Mexico Border

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of availability of Draft Programmatic Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) has prepared a Draft Programmatic Environmental Impact Statement (Draft PEIS) for future improvements to three Rio Grande Flood Control Projects (FCP) operated by the USIBWC along the Texas-Mexico Border: the Rectification FCP, the Presidio FCP and Lower Rio Grande FCP. The PEIS, prepared in cooperation with the United States Bureau of Reclamation, United States Fish and Wildlife Service and United States Army Corps of Engineers, analyzes potential impacts of the No Action Alternative and three action alternatives for future FCP improvements under consideration.

Because several measures under consideration are at a conceptual level of development, the USIBWC has taken a broad programmatic look at the

potential environmental implications of measures identified for future implementation. The USIBWC will apply the programmatic evaluation as an overall guidance for future environmental evaluations of individual improvement projects whose implementation is anticipated or possible within a 20-year timeframe. Once any given improvement project is identified for future implementation, site-specific environmental documentation will be developed based on project specifications and PEIS findings. Public participation in the evaluation of potential effects is encouraged. Public hearings will be held at the Cities of El Paso, Presidio and McAllen, Texas, to receive oral comments on the Draft PEIS from interested organizations and individuals through transcription by a certified court reporter. Written comments may be submitted at the public hearings, or mailed to the USIBWC during the 45-day public review period to the contact and address below.

DATES: Written comments are requested by September 24, 2007, which is calculated from the anticipated date of the Environmental Protection Agency (EPA) Notice of Availability of August 10, 2007. Public hearings will be held at the following locations and dates: (1) El Paso, Texas on August 21, 2007, from 6 p.m. to 9 p.m. MST at the USIBWC Offices, 4171 N. Mesa, C–100, El Paso, Texas 79902; (2) Presidio, Texas on August 22, 2007, from 6 to 9 p.m. CST at the Presidio Chamber of Commerce, 202 W. Oreilly Street, Presidio, Texas 79845; and (3) McAllen Texas on August 28, 2007, from 6 to 9 p.m. CST at the Four Point Sheraton Hotel, 2721 S. 10th Street, McAllen, Texas 78503. Hearing dates and locations also will be announced in local newspapers one week prior to hearing dates.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or e-mail: *danielborunda@ibwc.state.gov.*

Copies of the Draft PEIS are available for inspection and review at the following locations: United States Section, International Boundary and Water Commission, 4171 North Mesa Street, El Paso, Texas; USIBWC Mercedes Field Office, 325 Golf Course Road, Mercedes, Texas 78570; Brownsville Public Library, 2600 Central Blvd, Brownsville, Texas 78520; Harlingen Public Library, 410 '76 Drive, Harlingen, Texas 78550; McAllen Public Library, 601 N. Main Street, McAllen, Texas 78501; and City of Presidio Library, 2440 Oreilly St., Presidio, TX 79845. A copy of the Draft PEIS will also be posted at the USIBWC Web site at *http://www.ibwc.state.gov.*

SUPPLEMENTARY INFORMATION: The Draft PEIS analyzes potential effects of the No Action Alternative and three action alternatives for future improvement of the Rectification, Presidio and Lower Rio Grande Flood Control Projects. Potential improvements were organized in three action alternatives: (1) Enhanced Operation and Maintenance Alternative, focusing on engineering improvements; (2) Integrated Water Resources Management Alternative, integrating additional water conservation and quality measures to the projects' core mission of flood control and water delivery; and (3) Multipurpose Project Management Alternative, incorporating additional measures for multiple use of the floodway and environmental measures supporting initiatives by federal agencies, local governments, and other organizations, to be conducted largely under cooperative agreements. The Draft PEIS evaluated three action alternatives for each flood control project in terms of potential effects relative to those of the No Action Alternative, in the areas of water, biological, cultural and socioeconomic resources, land use, and environmental health issues.

A copy of the Draft PEIS has been filed with EPA in accordance with 40 CFR parts 1500–1508 and USIBWC procedures. The public comment period of the Draft PEIS will end 45 days after publication of the NOA in the **Federal Register** by EPA.

Dated: July 30, 2007.

Susan Daniel,

General Counsel.

[FR Doc. E7–15146 Filed 8–9–07; 8:45 am]

BILLING CODE 4710–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of Draft Programmatic Environmental Impact Statement, Improvements to the USIBWC Tijuana River Flood Control Project

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of availability of Draft Programmatic Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) has prepared a Draft Programmatic Environmental Impact Statement (Draft PEIS) for future improvements to the Tijuana River Flood Control Project operated by the USIBWC in southern San Diego County. The Draft PEIS, prepared in cooperation with the United States Army Corps of Engineers, analyzes potential effects of the No Action Alternative and two action alternatives for future improvements. Because several measures under consideration are at a conceptual level of development, the USIBWC has taken a broad programmatic look at the potential environmental implications of future implementation measures. The USIBWC will apply the programmatic evaluation as an overall guidance for future environmental evaluations of individual improvement projects whose implementation is anticipated or possible within a 20-year timeframe. Once any given improvement project is identified for future implementation, site-specific environmental documentation will be developed based on project specifications and PEIS findings. Public participation in the evaluation of potential effect is encouraged. A public hearing will be held at the City of Imperial Beach, California, to receive oral comments on the Draft PEIS from interested organizations and individuals through transcription by a certified court reporter. Written comments may be submitted at the public hearings or mailed to the USIBWC during the 45-day public review period to the contact and address below.

DATES: Written comments are requested by September 24, 2007, which is calculated from the anticipated date of the Environmental Protection Agency (EPA) Notice of Availability of August 10, 2007. A Public hearing will be held on August 30, 2007, from 6 p.m. to 9 p.m. PST, at the City of Imperial Beach, Dempsey Holder Safety Center, 950 Ocean Lane, Imperial Beach, CA 91932. Hearing date and location will also be announced in local newspapers one week prior to the hearing date.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or e-mail: *danielborunda@ibwc.state.gov*.

Copies of the Draft PEIS are available for inspection and review at the following locations: United States

Section, International Boundary and Water Commission, San Diego Field Office, 2225 Dairy Mart Road, San Ysidro, CA 92173; and San Diego Central Library, 820 E. Street, San Diego, CA 92101. A copy of the Draft PEIS will also be posted at the USIBWC Web site at *http://www.ibwc.state.gov*.

SUPPLEMENTARY INFORMATION: The Draft PEIS analyzes potential effects of the No Action Alternative and two action alternatives for future improvement of the Tijuana River FCP. Potential future improvements to the Tijuana River Flood Control Project were organized in two action alternatives, Enhanced Operation and Maintenance Alternative, focusing on engineering improvements; and Multipurpose Project Management Alternative, incorporating additional measures for multiple use of the floodway and environmental measures supporting initiatives by federal agencies, local governments, and other organizations; these initiatives would be conducted largely under cooperative agreements. The two action alternatives were evaluated in terms of their potential effects relative to those of the No Action Alternative, in the areas of water, biological, cultural and socioeconomic resources, land use, and environmental health issues.

A copy of the DEIS has been filed with EPA in accordance with 40 CFR parts 1500–1508 and USIBWC procedures. The public comment period of the Draft PEIS will end 45 days after publication of the NOA in the **Federal Register** by EPA.

Dated: August 1, 2007.

Susan E. Daniel,

General Counsel.

[FR Doc. E7–15429 Filed 8–9–07; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1123 (Preliminary)]

Steel Wire Garment Hangers From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping duty investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1123 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of steel wire garment hangers, provided for in subheading 7326.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by September 14, 2007. The Commission's views are due at Commerce within five business days thereafter, or by September 21, 2007.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187/ *fred.ruggles@usitc.gov),* Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on July 31, 2007, by M&B Metal Products Company, Inc. (''M&B''), Leeds, AL, on behalf of the domestic industry that produces steel wire garment hangers.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C.1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 21, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (*202–205–3187/ fred.ruggles@usitc.gov*) not later than August 17, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 24, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the

requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 31, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–15660 Filed 8–9–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 3, 2007.

The Department of Labor has submitted the following public information collection request (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 the ICR announced herein 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 *http://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: Katherine Astrich, OMB Desk Officer for the Employment and Training Administration (ETA), 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: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. Since this is a request for a new OMB control number, in order to ensure the appropriate consideration, comments should reference the title of the collection (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: New Collection (Request for a new OMB Control Number).

Title: YouthBuild Reporting System.

OMB Number: 1205–0NEW.

Number of Respondents: 85.

Estimated Total Annual Burden Hours: 16,280.

Affected Public: Private Sector: Not-for-profit institutions.

Description: YouthBuild grantees will collect and report selected standardized information pertaining to customers in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. ETA will provide all grantees with a YouthBuild management information system (MIS) to use for collecting participant data and for preparing and submitting the required quarterly reports.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–15566 Filed 8–9–07; 8:45 am]

BILLING CODE 4510–FT–P

LEGAL SERVICES CORPORATION

Request for Comments—LSC Budget Request for FY 2009

AGENCY: Legal Services Corporation.

ACTION: Request for Comments—LSC Budget Request for FY 2009.

SUMMARY: The Legal Services Corporation is beginning the process of developing its FY 2009 budget request to Congress and is soliciting suggestions as to what the request should be.

DATES: Written comments must be received by August 31, 2007.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's (LSC) mission is to promote equal access to justice in our Nation and to provide for high-quality civil legal assistance to low income persons. LSC submits an annual budget request directly to Congress and receives an annual direct appropriation to carry out its mission. For the current fiscal year (FY 2007), LSC received an appropriation of $348,578,000, of which $330,760,500 was for basic field programs, $2,970,000 was for the Office of Inspector General, $12,743,000 was for management and administration; and $2,104,500 was for technology initiative grants. Revised Continuing Appropriations Resolution, 2007, Public Law 110–5, 20918, 121 Stat. 8, 44 (2007). (The FY 2008 budget request has already been submitted to Congress and LSC is awaiting Congressional action.)

As part of its annual budget and appropriation process, LSC notifies the Office of Management and Budget (OMB) as to what the LSC budget request to Congress will be for the next fiscal year. OMB has requested this information by September 10 of this year. Accordingly, LSC is currently in the process of formulating its FY 2009 budget request.

LSC invites public comment on what its FY 2009 budget request should be. Interested parties may submit comments to LSC by September 1, 2007. More information about LSC can be found at LSC's Web site: *http://www.lsc.gov.*

Dated: August 7, 2007.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. E7–15661 Filed 8–9–07; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket Nos. 2001–8 CARP CD 98–99, 2002–8 CARP CD 2000, 2003–2 CARP CD 2001, 2004–5 CARP CD–2002, 2001–5 CARP SD 99, 2001–7 CARP SD 2000, and 99–4 CARP DPRA]

Notice of Terminations

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of termination of proceedings.

SUMMARY: The Copyright Office of the Library of Congress is announcing the termination of the proceedings in the above–captioned dockets conducted under the former Copyright Arbitration Royalty Panel system. The Office is also providing notice that the authority to set rates or to make determinations regarding the future distribution of royalty funds associated with these proceedings will be transferred to the Copyright Royalty Board.

DATES: Effective August 10, 2007.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Acting General Counsel, or Ben Golant, Principal Legal Advisor. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (the ''CRDRA''), Pub. L. 108–419, No. 118 Stat. 2341. This Act, which became effective on May 31, 2005, phases out the Copyright Arbitration Royalty Panel (''CARP'') system and replaces it with three permanent Copyright Royalty Judges (''CRJs''). Additionally, CRDRA allows for the termination of ''any [CARP] proceeding commenced by the date of the enactment of this Act...and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.'' Section 6(b)(1) of the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108–419. The Copyright Office is announcing the termination of all open proceedings under this provision.

Cable Royalties. The cable statutory license, first enacted through the Copyright Act of 1976, and codified at Section 111 of the Act, provides cable systems with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television or radio station licensed by the Federal Communications Commission (''FCC''). Cable systems that retransmit broadcast signals in accordance with the provisions governing the statutory license set forth in Section 111 are required to pay royalty fees to the Copyright Office. Payments made under the cable statutory license are remitted semi–annually to the Copyright Office which invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees. We terminate Docket Nos. 2001–8 CARP CD 98–99, 2002–8 CARP CD 2000, 2003–2 CARP CD 2001, and 2004–5 CARP CD–2002, the four Section 111 CARP proceedings that have remained open.

We note that there has been a controversy regarding the participation of the Independent Producers Group (''IPG'') in the distribution of the 1998–2002 cable royalty funds. In past Orders, the Office has found that IPG has repeatedly failed to comply with the rules governing the CARP process, especially with regard to service of filings on other parties. Consequently, the Office did not accept its responses to its September 2005 Orders when making its determination with respect to a further partial distribution. *See, e.g.,* Distribution of the 1998–2002 Cable Royalty Funds, Order (rel. Apr. 3, 2007). In response to this order, IPG asked the Office to clarify that it remains a party to the proceedings in which it has an interest. (Letter from James Sun, Pick & Boydston, LLP, dated April 11, 2007.) The question, however, is moot. Termination of these proceedings brings an end to all outstanding controversies before the Office and vests authority in the CRJs to initiate a new proceeding in accordance with their rules to consider the disposition of the remaining royalty fees that have not yet been distributed.

Satellite Royalties. The satellite carrier statutory license, first enacted through the Satellite Home Viewer Act (''SHVA'') of 1988, and codified in Section 119 of the Act, establishes a statutory copyright licensing scheme for satellite carriers that retransmit the signals of distant television network stations and superstations to satellite dish owners for their private home viewing and for viewing in commercial establishments. Satellite carriers may use the Section 119 license to retransmit the signals of superstations to subscribers located anywhere in the United States. However, the Section 119 statutory license limits the secondary transmissions of network station signals to no more than two such stations in a single day to persons who reside in unserved households. Each year satellite carriers submit royalties to the Copyright Office under the section 119 statutory license for the retransmission to their subscribers of superstations and network stations to unserved households. 17 U.S.C. 119. These royalties, in turn, have been distributed in one of two ways to copyright owners whose works were included in a retransmission of an over–the–air television broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either have negotiated the terms of a settlement as to the division of the royalty funds, or a CARP was convened to conduct a proceeding to determine the distribution of the royalties that remain in controversy. We terminate Docket Nos. 2001–5 CARP SD 99 and 2001–7 CARP SD 2000, the two Section 119 CARP proceedings that have remained open. Henceforth, resolution of the controversies concerning the distribution of the remaining funds shall be considered by the CRJs.

Section 115 Royalties. The Digital Performance Right In Sound Recording Act of 1995 (''DPRA''), Pub. L. No. 104–39, 109 Stat. 336, clarified the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions, including the right to distribute or authorize distribution by means of a digital transmission which constitutes a ''digital phonorecord delivery.''' 17 U.S.C. 115(c)(3)(A). The DPRA established that the rate for all DPDs made or authorized under a compulsory license on or before December 31, 1997, was the same as the rate in effect for the making and distribution of physical phonorecords for that period. 17 U.S.C. 115(c)(3)(A)(i). For DPDs made or authorized after December 31, 1997, the DPRA established a two–tier process for determining the terms and rates: either the copyright owners of nondramatic musical works and those persons entitled to obtain a license may have negotiated the rates and terms for the statutory license, or they may have participated in a CARP proceeding. 17 U.S.C. 115(c)(3)(A)–(D). Such rates and terms, whether negotiated by the parties or determined by a CARP, were to distinguish between ''digital phonorecord deliveries where the reproduction or distribution of a

phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general.'' 17 U.S.C. 115(c)(2)(C)–(D). We terminate Docket No. 99–4 CARP DPRA, the one CARP proceeding that has remained open under Section 115.

Disposition. We hereby terminate the above–captioned proceedings immediately pursuant to Section 6(b)(1) of the CRDRA. As a result, subsequent proceedings regarding the rates for Section 115 and the distribution of royalties that were the subject of the identified proceedings shall be initiated under the new Copyright Royalty Board system.

Dated: August 6, 2007.

Marybeth Peters,

Register of Copyrights.

[FR Doc. E7–15680 Filed 8–9–07; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–058)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for a summer internship. Students are required to submit an application package consisting of an application form, a personal essay describing career goals, a parent/guardian permission form for parents to sign approving the child's participation, and a teacher recommendation.

II. Method of Collection

NASA will utilize a Web-base application form with instructions and other application materials also on-line. However, once the application form and other application materials are down loaded and filled out, the package is mailed in to NASA.

III. Data

Title: INSPIRE (Interdisciplinary National Science Program Incorporating Research and Education Experience) Application.

OMB Number: 2700–XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 4000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Acting Deputy Chief Information Officer.

[FR Doc. E7–15677 Filed 8–9–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–060)]

Notice of Information Collection Under OMB Review.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting approval for a new collection for the Exploration Systems Mission Directorate Student Internship program. NASA must select candidates by a competitive process for student internships, requiring personal information on the application. The students must meet the basic eligibility requirements of: Full student enrollment at an accredited college or university in the U.S., be a U.S. citizen, and have a Grade Point Average (GPA) of 3.0 on a scale of 4.0.

II. Method of Collection

NASA will utilize a Web-based on-line application form for the information collection.

III. Data

Title: Exploration Systems Mission Directorate Student Internship Program Application.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 292.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 292.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Acting Deputy Chief Information Officer.

[FR Doc. E7–15678 Filed 8–9–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–057)]

National Environmental Policy Act; Constellation Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Draft Constellation Programmatic Environmental Impact Statement (PEIS).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), NASA's NEPA policy and procedures (14 CFR Part 1216, Subpart 1216.3), and Executive Order 12114, NASA has prepared and issued a Draft PEIS for the proposed Constellation Program to assist in the NASA decision making process.

The Proposed Action is to continue preparations for and to implement the Constellation Program. The focus of the Constellation Program is the development of the flight systems and Earth-based ground infrastructure required to enable the United States to have continued access to space and to enable future human missions to the International Space Station, the Moon, Mars, and beyond. The Constellation Program also would be responsible for developing and testing flight hardware, and performing mission operations once the infrastructure is sufficiently developed. The only alternative to the Proposed Action discussed in detail is the No Action Alternative where NASA would not continue preparations for nor implement the Constellation Program and therefore, would forego the opportunity for human exploration of space using U.S. space vehicles.

DATES: Interested parties are invited to submit comments on environmental issues and concerns, preferably in writing, on or before September 30, 2007, or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the Draft Constellation PEIS, whichever is later.

ADDRESSES: Comments submitted by mail should be addressed to ZA/Environmental Manager, Constellation Program, NASA Lyndon B. Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058. Comments may be submitted via electronic mail to *nasa-cxeis@mail.nasa.gov.* Comments also may be submitted via telephone at (toll free) 1–866–662–7243.

The Draft PEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001 (202–358–0168).

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–3273).

(c) NASA, Dryden Flight Research Center, Edwards, CA 93523 (661–276–2704).

(d) NASA, George C. Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–4721).

(f) NASA, John C. Stennis Space Center, MS 39529 (228–688–2118).

(g) NASA, John F. Kennedy Space Center, FL 32899 (321–867–2745).

(h) NASA, John H. Glenn Research Center at Lewis Field, Cleveland, OH 44135 (866–404–3642).

(i) NASA, Lyndon B. Johnson Space Center, Houston, TX 77058 (281–483–8612).

(j) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(k) Jet Propulsion Laboratory, Pasadena, CA 91109 (818–393–6779).

The Draft Constellation PEIS, along with the Notice of Intent (NOI) to prepare the Draft Constellation PEIS that was issued on September 26, 2006, are available on the Internet in Adobe® portable document format at *http://www.nasa.gov/mission_pages/constellation/main/peis.html.*

FOR FURTHER INFORMATION CONTACT: ZA/Environmental Manager, Constellation Program, NASA Lyndon B. Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, telephone (toll free) 1–866–662–7243, or electronic mail at *nasa-cxeis@mail.nasa.gov.* Additional Constellation Program information may also be found on the Internet at *http://www.nasa.gov/mission_pages/constellation/main/index.html.* Information specific to the Constellation Program NEPA process may be found at *http://www.nasa.gov/mission_pages/exploration/main/eis.html.*

SUPPLEMENTARY INFORMATION: The Draft Constellation PEIS addresses the environmental impacts associated with continuing preparations for and implementing the Constellation Program. The Constellation Program would build a new crew vehicle called the Orion and two new launch vehicles, Ares I to transport crew and Ares V to transport cargo (for lunar or Mars missions). The environmental impacts of principal concern are those that would result from fabrication, testing, and launching of the Orion spacecraft and the Ares I and Ares V launch vehicles.

The Constellation Program would be an extremely large and complex program spanning decades and requiring the efforts of a broad spectrum of talent located throughout NASA and many commercial entities. Under NASA's Proposed Action, Constellation Program activities would be expected to occur at the following NASA sites:

—John F. Kennedy Space Center, Brevard County, Florida

—John C. Stennis Space Center, Hancock County, Mississippi

—Michoud Assembly Facility, New Orleans, Louisiana

—Lyndon B. Johnson Space Center, Houston, Texas

—George C. Marshall Space Flight Center, Huntsville, Alabama

—John H. Glenn Research Center, Cleveland, Ohio

—Ames Research Center, Moffett Field, California

—Langley Research Center, Hampton, Virginia
—Johnson Space Center White Sands Test Facility (and the U.S. Army's White Sands Missile Range), Las Cruces, New Mexico
—Dryden Flight Research Center, Edwards Air Force Base, California
—Goddard Space Flight Center, Greenbelt, Maryland
—Jet Propulsion Laboratory, Pasadena, California.

Activities associated with the Constellation Program also would occur at two Alliant Techsystems-Launch Systems Group locations in Promontory and Clearfield, Utah and at various other commercial facilities throughout the United States.

Organizationally, the Constellation Program would consist of a single Program Office at NASA's Lyndon B. Johnson Space Center which would have overall responsibility for management of the Constellation Program, and multiple Project Offices including Project Orion, Project Ares, the Ground Operations Project, the Mission Operations Project, the Lunar Lander Project, and the Extravehicular Activities Systems Project. Each Project Office would focus on specific technology and systems development and operational capabilities for the Constellation Program. As additional mission requirements are developed, additional Project Offices would be established with the responsibility to develop the systems to meet such requirements (*e.g.*, Lunar Surface Systems and Mars Surface Systems). Collectively, these Project Offices would develop the mission systems (*i.e.*, crew vehicles, launch vehicles, and mission hardware) and the infrastructure needed to support crewed missions to the International Space Station and human exploration of the Moon, Mars, and beyond.

Public comments on environmental issues and concerns associated with the Proposed Action are hereby requested.

Olga M. Dominguez,

Assistant Administrator for Infrastructure and Administration.

[FR Doc. E7–15679 Filed 8–9–07; 8:45 am]

BILLING CODE 3510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–059)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is an online application form for the Exploration Systems Mission Directorate-Space Grant Consortia Faculty Project. NASA must select candidates via a competitive process, and in order to do so must collect personal information in an application. The voluntary respondents will be full-time professors that are employed at a university in the United States or Puerto Rico.

II. Method of Collection

This information collected on the application is needed to competitively select faculty to participate in the 10 week Fellowship.

III. Data

Title: Exploration Systems Mission Directorate—Space Grant Consortia Faculty Project.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Number of Respondents: 156.

Responses Per Respondent: 0.5 hour.

Annual Responses: 156.

Annual Burden Hours: 80.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–15687 Filed 8–9–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Ocean Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: California Current Ecosystem LTER Site Review, Proposal Review Panel for Ocean Sciences (10752).

Date and Time:

Sept 16, 2007; 4 p.m.–8 p.m.

Sept 17, 2007; 8 a.m.–7 p.m.

Sept 18, 2007; 8 a.m.–6 p.m.

Place: Scripps Institution of Oceanography, La Jolla, CA.

Type of Meeting: Partially closed.

Contact Person: Dr. Henry Gholz, Division of Environmental Biology, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 292–8481.

Purpose of Meeting: Formal third-year review of the California Current Ecosystem Long-Term Ecological Research project.

Agenda:

Sunday 16 Sept. 2007

4 p.m.–8 p.m. NSF Briefing of the Review Team at Hotel (closed)

Monday 17 Sept. 2007 at Scripps

8 a.m.–4 p.m. CCE–LTER Project Introduction (open)

Overview and Evolution/Partnerships

Research Presentations (talks 20 min + questions 5 min)

Education and Outreach

Information Management

Site Management

4 p.m.–6:45 p.m. Reception and Student Posters (open)

Meet with graduate students and post-docs

7 p.m. Dinner locally (open); review team separate working dinner (closed)

Tuesday 18 Sept. 2007

8 a.m.–8:30 a.m. Review Team assemble for initial feedback and questions (closed)

9 a.m.–11 a.m. Meetings with SIO Adminstration (closed)
1 p.m.–4:15 p.m. Review Team Report Work Session (closed)
4:30 p.m.–5:55 p.m. Report—out by Review Team (closed)
6 p.m. Adjourn

Reason for Closing: During closed sessions the review will include information of a confidential nature, including technical and financial information. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: August 7, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–15624 Filed 8–9–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Website: *http://www.nsf.gov* This information may also be requested by telephoning, 703/292–8182.

Dated: August 7, 2007.

Susanne Bolton,

Committee Management Officer .

[FR Doc. E7–15625 Filed 8–9–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Entergy Nuclear Operations, Inc. (Entergy) has submitted an application for renewal of Facility Operating Licenses Nos. DPR–26 and DPR–64 for an additional 20 years of operation at Indian Point Nuclear Generating Unit Nos. 2 and 3. Indian Point is located in Buchanan, NY.

The current operating licenses for Indian Point Nuclear Generating Unit Nos. 2 and 3 expire on September 9, 2013, and December 12, 2015, respectively. The application for renewal, dated April 23, 2007, as supplemented by letters dated May 3, 2007, and June 21, 2007, was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 54. A notice of receipt and availability of the application, which included Entergy's environmental report (ER), was published in the **Federal Register** on May 11, 2007 (72 FR 26850). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on August 1, 2007 (72 FR 42134). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Entergy submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the ER is ML071210530. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* The ER may also be viewed on the internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/indian-point.html.* In addition, the ER is available for public inspection near Indian Point at the following three public libraries: the White Plains Public Library, 100 Martine Avenue, White Plains, NY 10601; the Field Library, 4 Nelson Avenue, Peekskill, NY 10566; and the Hendrick Hudson Free Library, 185 Kings Ferry Road, Montrose, NY 10548.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (NUREG–1437), related to the review of the application for renewal of the Indian Point Nuclear Generating Unit Nos. 2 and 3 operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Entergy Nuclear Operations, Inc.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public scoping meetings for the Indian Point Nuclear Generating Unit Nos. 2 and 3 license renewal supplement to the GEIS. The scoping meetings will be held at the Colonial Terrace, 119 Oregon Road, Cortlandt Manor, New York, on Wednesday, September 19, 2007. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Colonial Terrace in Cortlandt Manor. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting NRC's Senior Project Manager, Mr. Bo Pham, at 1–800–368–5642, extension 8450, or by e-mail to the NRC at *IndianPointEIS@nrc.gov* no later than September 10, 2007. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Pham will need to be contacted no later than September 10, 2007, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the Indian Point Nuclear Generating Unit Nos. 2 and 3 license renewal review to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, MailstopT–6D59, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by October 12, 2007. Electronic comments may be sent by e-mail to the NRC at Indian PointEIS@nrc.gov, and should be sent no later than October 12, 2007, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (72 FR 42134). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of a separate notice and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Pham at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 6th day of August 2007.

For the Nuclear Regulatory Commission.

Rani Franovich,

Branch Chief, Environmental Branch B, Division of License Renewal,Office of Nuclear Reactor Regulation.

[FR Doc. E7–15636 Filed 8–9–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56202, File No. SR–MSRB–2007–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change to MSRB Rule G–14, Reports of Sales or Purchases Relating to Reporting of Transactions in Certain Special Trading Situations

August 3, 2007.

On June 13, 2007, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of an amendment to and interpretation of its Rule G–14, Reports of Sales or Purchases. The MSRB proposed an effective date for this proposed rule change of January 2, 2008. The proposed rule change was published for comment in the **Federal Register** on July 3, 2007.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

The proposed rule change would: (i) Clarify transaction reporting requirements and require use of the existing M9c0 special condition indicator on trade reports of three types of transactions arising in certain special trading situations that do not represent typical arm's-length transactions negotiated in the secondary market; (ii) provide an end-of-day exception from real-time transaction reporting for trade reports containing the M2c0 or M9c0 special condition indicator; and (iii) create two new special condition indicators for purposes of reporting certain inter-dealer transactions ''late.'' A full description of the proposal is contained in the Commission's Notice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[4] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[5] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[6] In particular, the Commission finds that the proposed rule change is consistent with the Act because it will allow the municipal securities industry to produce more accurate trade reporting and transparency and will enhance surveillance data used by enforcement agencies. The proposal will be effective January 2, 2008, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–MSRB–2007–01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15598 Filed 8–9–07; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55957 (June 26, 2007), 72 FR 36532 (July 3, 2007) (''Commission's Notice'').

[4] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56208; File No. SR–NYSE–2007–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Amendments to Rule 600 To Provide Guidance Regarding New and Pending Arbitration Claims in Light of the Consolidation of NYSE Regulation Into NASD DR

August 6, 2007.

I. Introduction

On May 23, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NYSE Rule 600 and proposing new NYSE Rule 600A. On June 4, 2007, the Commission published for comment the proposed rule change in the **Federal Register**.[3] The Commission received one comment on the proposal.[4] On June 21, 2007, the NYSE filed Amendment No. 1 to revise the proposed rule change.[5] On July 11, 2007, the Commission published for comment the proposed rule change, as amended, in the **Federal Register**.[6] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

NYSE proposes to amend current Rule 600 and adopt a new Rule 600A. The purpose of the proposed rule change is to provide guidance regarding both new and pending arbitration claims in light of the consolidation of the member firm regulation function of NYSE Regulation, Inc. (''NYSE Regulation'') with the National Association of Securities Dealers, Inc. (''NASD'').[7] On July 30, 2007,[8] NYSE Regulation ceased to provide an arbitration program, and its arbitration department (''NYSE Arbitration'') was consolidated with that of NASD Dispute Resolution, Inc. (''NASD DR'').[9] Because the consolidation has already occurred, the effective date of this rule change will be when the Commission approves this proposed rule change (SR–NYSE–2007–48) (''Effective Date''). As a result, on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55818 (May 25, 2007), 72 FR 30898 (June 4, 2007).

[4] *See* letter from Jill Gross and Nathan Perrone, Pace Investor Rights Project, dated June 25, 2007 (''Pace'').

[5] Amendment No. 1 replaced and superseded the original filing in its entirety.

[6] *See* Securities Exchange Act Release No. 56015 (July 5, 2007), 72 FR 37891 (July 11, 2007).

[7] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (Aug. 1, 2007) (SR–NASD–2007–053).

[8] The consolidation of the member firm regulatory functions did not occur until July 30, 2007, when definitive agreements were signed by the NYSE and NASD. *Id.*

[9] NASD DR is now doing business as FINRA DR. NASD DR now administers NYSE Arbitration, which is governed by NYSE Regulation Rules 600 through 639. NASD DR also administers an arbitration program for NYSE Arca, Inc. (''NYSE Arca'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities''), respectively governed by NYSE Arca and NYSE Arca Equities Rule 12.

and after July 30, 2007, all arbitration claims filed prior to the Effective Date, and previously subject to NYSE Regulation rules and administration, will be administered by NASD DR pursuant to a Regulatory Services Agreement with the NYSE.

The proposed amendments provide that NYSE Arbitration Rules 600 through 639, and Rule 347, will only apply to NYSE arbitration cases pending prior to the Effective Date, and that, thereafter, disputes between NYSE member organizations, associated persons, and/or their customers will be arbitrated under the NASD DR Codes of Arbitration Procedure.

The rules governing the administration of any particular arbitration will depend on the date the case was filed. This will ensure that any person that filed an arbitration under a particular set of arbitration rules will continue to have the case administered pursuant to those rules through to the case's conclusion. There are two categories of cases. First, NYSE arbitration cases filed before the Effective Date will continue to be governed by existing NYSE Regulation arbitration rules, as will pending NYSE Arca and NYSE Arca Equities cases filed on or after February 1, 2007.[10] Second, those NYSE Arca and NYSE Arca Equities cases filed on or prior to January 31, 2007 are (and will continue to be) governed by Rule 12.[11]

Proposed Exchange Rule 600A(a) provides detailed guidance concerning claims involving member organizations and/or associated persons that are asserted on and after the Effective Date. First, any dispute, claim or controversy between or among member organizations and/or associated persons shall be arbitrated pursuant to the NASD DR Codes of Arbitration Procedure. Second, any dispute, claim or controversy between a customer or a non-member and a member organization and/or associated person arising in connection with the business of such member organization and/or in connection with the activities of an associated person shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. This obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

In almost all cases the change from NYSE to NASD DR arbitration rules should not result in material, substantive differences to persons participating in the arbitration process. However, one difference is the treatment of employment discrimination claims. NASD DR rules provide that any claim alleging employment discrimination, including any sexual harassment claims, in violation of a statute, will be eligible for arbitration pursuant to either a pre-dispute or a post-dispute agreement to arbitrate. In contrast, Exchange Rule 600(f) and Exchange Rule 347(b) permit claims to be arbitrated only when the parties have agreed to arbitrate the claim after it has arisen.

Rule 347(a) provides that a controversy between a registered representative and a member organization ''arising out of the employment or termination of employment of such registered representative'' shall be arbitrated at the request of any party. These employment claims will continue to be covered by NASD DR Rule 13200(a), which requires the arbitration of disputes arising out of the ''business activities'' of a member or an associated person and is between or among members, members and associated persons, or associated persons. Accordingly, Rule 600 will be amended to provide that Rule 347 will apply only to claims filed before the Effective Date.

Proposed Rule 600A(b) will explicitly retain the Exchange's enforcement authority related to arbitration. Proposed Rule 600A(c) also will retain the substance of current Exchange Rule 637, regarding the obligation to honor arbitration awards and will specify that failure to submit a matter to arbitration as required by Rule 600A will subject the member organization to Exchange disciplinary action. Finally, proposed Rule 600A(d) will specify that the submission of any matter to arbitration as provided for under the Rule will in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

III. Summary of Comment Received

The Commission received one comment on the proposal.[12] The commenter supported the proposed rule change because it would reduce confusion for investors. The commenter also noted that the regulatory consolidation is beneficial for investors with claims up to $50,000 because existing NASD rules provide greater investor choice and lower forum costs than the NYSE.[13]

The commenter also urged NASD to adopt a rule, similar to a pending NYSE rule, that would permit one arbitrator to hear claims up to $200,000, instead of $50,000 under existing NASD rules.[14] As this additional point related to matters not covered by the proposed rule change, it is beyond the scope of the proposed rule change.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5)[15] of the Act, which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the proposed rule change will streamline the arbitration process and provide for a unified and more efficient arbitration forum with one set of arbitration rules and administrative procedures. This will allow resources to be devoted to maintaining and improving the NASD DR program, rather than splitting resources between two mainly duplicative programs. The Commission also believes the proposed rule change will provide for a clear and orderly transition. As a result, the proposed rule change will better protect investors and the public interest.[16]

The Commission finds good cause to approve the proposed rule change, as amended, prior to the thirtieth day after the proposal was published for comment in the **Federal Register**. This approval allows the proposed rule change to take effect without delay. Because the proposed rule change will provide for a clear and orderly transition from NYSE Arbitration to NASD DR, accelerated approval is necessary to provide clarity to investors regarding the appropriate forums for pending and future arbitration claims. In light of the recent consolidation, accelerated approval of the proposed rule change also will allow NASD DR

[10] *See* Securities Exchange Act Release No. 55142 (January 19, 2007), 72 FR 3898 (January 26, 2007) (SR–NYSEArca–2006–54) and Securities Exchange Act Release No. 55141 (January 19, 2007), 72 FR 3897 (January 26, 2007) (SR–NYSEArca–2006–55).

[11] The Commission also is considering rule filings that would consolidate the NYSE Arca arbitration program into NASD DR. *See* Securities Exchange Act Release No. 56071 (July 13, 2007), 72 FR 40184 (July 23, 2007) (SR–NYSEArca–2007–59); and Securities Exchange Act Release No. 56070 (July 13, 2007), 72 FR 40188 (July 23, 2007) (SR–NYSEArca–2007–60).

[12] Pace.

[13] *Id.*

[14] *Id.*

[15] 15 U.S.C. 78f(b)(5).

[16] In approving the 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).

and NYSE Regulation to ensure that their arbitration programs are fully consolidated in a timely and efficient manner, without any further delay or uncertainty.

For these reasons, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to grant accelerated approval to the proposed rule change.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[17] that the proposed rule change, as modified by Amendment No. 1 (SR–NYSE–2007–48), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15619 Filed 8–9–07; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that are included in this notice are for new information collections and revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or emailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235,Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by emailing *OPLM.RCO@ssa.gov.*

1. *Consent Based Social Security Number Verification Process—0960–NEW.*

Note: Please note that we published the 60-day Federal Register Notice for this collection on December 30, 2005, at 70 FR 77439. For the year and a half following that date, we have communicated with multiple businesses interested in this collection and have significantly altered our business process plan based on their comments.

Background

The Social Security Administration (SSA) has provided limited fee based Social Security Number (SSN) verification service to private businesses and other requesters that obtain a valid, signed consent form from the Social Security Number Holder. Based on the consent forms, SSA verifies the Number Holders' SSNs for the requesting party. The Privacy Act of 1974, 5 U.S.C. 552a(b), section 1106 of the Social Security Act, 42 U.S.C. 1306, and SSA regulation at 20 CFR 401.100 establish the legal authority for SSA to provide SSN verifications to third party requesters based on consent. Currently, the consent-based SSN verification service for high volume requesters is a paper-driven, labor-intensive process. In recent years, the demand for SSN verification has grown within the business community. As a result, SSA is developing an Agency strategy to perform fee based SSN verifications with consent in a high volume, centralized process.

The Consent Based Social Security Number Verification (CBSV) process is the first phase of the Agency's long term strategy to provide the business community with fee based disclosures with consent in high volume. SSA is developing CBSV as a user-friendly, Internet-based application with safeguards that will protect the public's information. In addition to the benefit of providing high volume, centralized SSN verification services to the business community in a secure manner, CBSV also will provide the Agency with inherent cost and workload management benefits.

SSA is in the planning stage of developing the Agency's second phase of the fee-based web service system which would provide private industry and other third party requesters with disability and retirement data (including insured status information, dates of entitlement, and benefit amounts). This process, the Consent Based Benefit Information System (CBBI), would assist private insurance or pension benefit companies to determine private entitlements and coordinate entitlement to such benefits. These actions help the requesters to reduce and/or eliminate the overpayment of these benefits to their insured clients. Similar to the CBSV process, companies would be required to enter into a legal agreement with SSA, obtain written consent from the record holder, reimburse SSA, and follow SSA's established systems security and audit guidelines.

The CBSV Collection

The CBSV is a fee-based automated SSN verification service that can be used by private businesses and other requesting parties who register with SSA to use the system and have obtained valid consent from Number Holders. The purpose of the information collection is to verify for the requesting party that the submitted name and SSN match or do not match the information contained in the SSA records. After completing a registration process and paying the fee, the requesting party can submit a file through the CBSV Internet application containing names of Number Holders who have given valid consent, along with each Number Holder's accompanying SSN and date of birth (if available) or obtain real-time results using a web service application or SSA's Business Services Online (BSO) application. The Agency matches the information against SSA's Master File of Social Security Numbers, using SSN, name, date of birth and gender code (if available). If batch mode was used, the requesting party retrieves the results file from SSA; the results file indicates a match or no match for each SSN submitted.

Under the CBSV process, the requesting party does not submit the consent forms to SSA. SSA will require each requesting party to retain a valid consent form for each SSN verification request for a period of seven years. The requesting party is permitted to retain the consent forms in either electronic or paper format.

To ensure the integrity of the CBSV Process, SSA has added a strong audit component that requires audits (called

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

''compliance reviews'') at the discretion of the agency with all audit costs to be borne by the requesting party. These reviews will be conducted by independent certified public accountants (CPAs) to ensure compliance with all the terms and conditions of the parties' agreement with SSA, including a review of the consent forms. This review is performed at the requesting party's place of business to ensure the integrity of the process. In addition, SSA reserves the right to perform unannounced onsite inspections of the entire process including review of the technical systems which maintain the data and transaction records at the requesting party's place of business.

The respondents to the CBSV collection are the participating companies, members of the public who consent to the SSN verification, and CPAs who provide compliance review services.

Type of Request: New information collection.

Time Burden

Participating Companies:

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Registration process	90	1	120	180
Creation of file with SSN holder identification data; maintaining required documentation/forms	90	*251	60	22,590
Using the system to upload request file, check status, and download results file	90	251	5	1,883
Storing and maintenance of consent forms	90	251	60	22,590
Activities related to compliance review	90	251	60	22,590
Total				69,833

* Please note there are 251 Federal business days per year on which a requesting party could submit a file.

People Whose SSNs Will Be Verified:

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Reading and signing authorization for SSA to release SSN verification	10,000,000	1	3	500,000
Responding to CPA re-contact	4,500	1	5	375
Total				500,375

CPAs (conducting compliance review and preparing written report of findings):

Number of Respondents: 90.

Frequency of Response: 1.

Average Burden Per Response: 4,800.

Estimated Annual Burden: 7,200 hours.

Total Collective Burden: 577,408 hours.

Cost Burden

The public burden cost is dependent upon the number of companies and transactions. The first year cost estimates below are based upon 90 participating companies submitting a total of 10 million transactions. The total cost for developing the system is $5.6 million. $2.6 million will be required prior to development of the system. The $3.0 million that SSA has already expended will be recouped over the depreciable life of the system based on the fee per transaction model.

- One-Time Per Company Registration Fee—$5,000
- Estimated Per SSN Transaction Fee—$0.27 [1]
- Estimated Per Company Cost To Build Web Service—$200,000 [2]
- Estimated Per Company Cost To Store Consent Forms—$20,000
- Estimated Per Company Cost To Contract With CPA for Audit—$8,000

SSA will hold an ''open enrollment'' season. If more than the estimated number of companies enrolls, the estimated per SSN transaction fee cited above could be less.

2. *Medicare Quality Review Forms—20 CFR 418(b)(5)—0960–0707.* The Social Security Administration (SSA) uses the Medicare Quality Review Forms collection to verify the information reported on Medicare Part D Subsidy applications (OMB No. 0960–0696) for a selected number of applicants. SSA is planning to expand the scope of this collection by conducting Quality Reviews with some current recipients of Medicare Part D subsidies who have recently undergone the redetermination process (OMB No. 0960–0723). This ICR is for two new appointment letters (forms SSA–9313 and SSA–9314) that such beneficiaries will complete to schedule an appointment for their Quality Review. The respondents are current recipients of Medicare Part D subsidies who have recently undergone a redetermination and who were selected for a Quality Review.

Type of Request: Revision to an existing OMB-approved information collection.

[1] The annual costs associated with the transactions to each company are dependent upon the number of SSN transactions submitted to SSA by the company on a yearly basis. For example, if a company anticipates submitting 1 million requests to SSA for the year, their total transaction cost for the year would be $0.27 × 1,000,000 or $270,000. Periodically, SSA will calculate its costs to provide CBSV services and adjust the fee charged as needed. Companies will be notified in writing of any change and will have the opportunity to cancel the agreement or continue service using the new transaction fee.

[2] A company may choose to submit batch files via the SSA Web site or submit real-time individual requests via the SSA Web site. There is no public burden cost with either of these methods of using the CBSV system.

Form No. and name	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
SSA–9301 (Medicare Subsidy Quality Review Case Analysis Questionnaire)	10,000	1	35	5,833
SSA–9302 (Notice of Quality Review Acknowledgement Form for those with Phones)	10,000	1	15	2,500
SSA–9303 (Notice of Quality Review Acknowledgement Form for those without Phones)	1,000	1	15	250
SSA–9304 (Checklist of Required Information; burden accounted for with forms SSA–9302, SSA–9303)	.....	.....	.....	.....
SSA–9308 (Request for Information)	20,000	1	15	5,000
SSA–9310 (Request for Documents)	10,000	1	5	833
SSA–9309 (Life Insurance Verification Form)	8,000	1	15	2,000
SSA–8510 (Authorization to the Social Security Administration to Obtain Personal Information)	10,000	1	5	833
SSA–9313 (Notice of Appointment Quality Review Acknowledgement Form)*	4,500	1	15	1,125
SSA–9314 (Notice of Quality Review Acknowledgement Form (unknown phone numbers)*	500	1	15	125
Total	.....	.....	.....	18,499

*These are the two new forms being cleared in the current ICR for this collection.

Dated: August 7, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–15663 Filed 8–9–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5882]

Culturally Significant Objects Imported for Exhibition Determinations; ''Pompeo Batoni: Prince of Painters in Eighteenth Century Rome''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Pompeo Batoni: Prince of Painters in Eighteenth Century Rome'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, Houston, Texas, from on or about October 21, 2007, until on or about January 28, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 2, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–15690 Filed 8–9–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5880]

State-59 Refugee Case Records

SUMMARY: Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–59, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C.(r)), and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 10, 2007.

It is proposed that the current system will retain the name ''Refugee Case Records.'' It is also proposed that due to the expanded scope of the current system, the altered system description will include revisions and/or additions to the following sections: System Location; Categories of Individuals covered by the System; Authority for Maintenance of the System; and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of such Uses. Changes to the existing system description are proposed in order to reflect more accurately the Bureau of Population, Refugees, and Migration record-keeping system, the Authority establishing its existence and responsibilities, and the uses and users of the system.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/ISS/IPS; Department of State, SA–2; Washington, DC 20522–8100. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Refugee Case Records, State-59,'' will read as set forth below.

Dated: July 9, 2007.

Raj Chellaraj,

Assistant Secretary for the Bureau of Administration,Department of State.

STATE–59

SYSTEM NAME:

Refugee Case Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) Refugee processing posts, that is, designated U.S. embassies, consulates and/or offices of overseas processing entities (agencies under cooperative

agreement with the Department of State that assist in the processing of applicants); (2) the Refugee Processing Center, 1401 Wilson Blvd., Arlington, VA 22209. The U.S. Department of State may change processing locations as needed. A list of refugee processing posts is available from the Office of Admissions, Bureau of Population, Refugees, and Migration, Room 5824, Department of State, Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for admission to the United States under the U.S. refugee program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Refugee or Visa–93 application and supporting documentation, including required biographic, biometric, medical, security, and sponsorship information, as well as correspondence related to individual refugee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1522(b) (Authorization for Programs for Initial Domestic Resettlement of and Assistance to Refugees); 8 U.S.C. 1157 (Annual Admission of Refugees and Admission of Emergency Situation Refugees); Letter of President Carter of January 13, 1981, 17 Weekly Compilation of Presidential Documents, Pg. 2880 (Refugee Resettlement Grants Program).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Office of Admissions, Bureau of Population, Refugees, and Migration, in the administration of its responsibility for the U.S. refugee admissions program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records may routinely be disclosed:

(1) To employees and contractors of the Department of State, including the Bureau of Population, Refugees and Migration, the Refugee Processing Center (RPC), overseas processing entities under cooperative agreement with the Department of State, and U.S. embassies or consulates, to coordinate and manage the U.S. refugee admissions program. The level of access to records depends on the user's official function.

(2) To the U.S. Citizenship and Immigration Services (USCIS) to determine the eligibility and admissibility of individuals applying for admission to the United States as refugees.

(3) To the International Organization for Migration (IOM) to arrange appropriate transportation to the United States, including departure and transit formalities.

(4) To the United Nations High Commissioner for Refugees (UNHCR) to coordinate resettlement and protection activities.

(5) To members of Congress or other Federal, State, and local government agencies having statutory or other lawful authority, as needed for the formulation, amendment, administration, or enforcement of immigration, nationality, and other laws of the United States.

(6) See also the ''Routine Uses'' paragraph of the Department's Prefatory Statement published in the **Federal Register** November 10, 2004.

(7) Additional routine uses include:

a. Biographic, educational, employment, and medical information may be disclosed to voluntary agency sponsors to ensure appropriate resettlement in the United States.

b. Statistical and demographic information from these records may be disclosed to state refugee coordinators, health officials, and interested community organizations.

c. Arrival and address information may be disclosed to consumer reporting agencies (31 U.S.C. 3711), debt collection contractors (31 U.S.C. 3718), and the Department of Treasury (31 U.S.C. 3716) to assist in the collection of indebtedness reassigned to the U.S. Government under the refugee travel loan program administered by the International Organization for Migration (IOM).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name, case number, alien number, and sponsor name.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets and/or in restricted areas. Access is limited to authorized personnel and contractors of the Department of State, the Refugee Processing Center, overseas processing entities, U.S. Citizenship and Immigration Services, and others specifically authorized under the ''Guidelines for the Treatment of Refugee Records Maintained by Overseas Processing Entities,'' an appendix to the Department of State's cooperative agreement with overseas processing entities. Access to computerized files is password-protected and controlled by user roles under the direct supervision of the system manager who can monitor and audit trails of access.

RETENTION AND DISPOSAL:

Record retention depends upon the outcome of the individual's application for admission. Active case records will be maintained until an application has been placed in inactive status, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State as approved by the National Archives and Records Administration. If individuals have been interviewed by the U.S. Citizenship and Immigration Services (USCIS), their files are transferred to the USCIS and subject to its disposition schedules. More specific information may be obtained by writing to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Admissions, Bureau of Population, Refugees and Migration; SA–1, Suite L–505; Department of State; 2401 E Street, NW., Washington, DC 20522. At specific overseas locations, the on-site system manager may be the Refugee Coordinator, the Refugee Officer, the consular officer responsible for refugee processing, or the overseas processing entity representative.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Department of State might have records pertaining to themselves should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100. The individual must specify that he/she wishes the Refugee Case Records of a specific processing location to be checked. At a minimum, the individual should include: Name (and any aliases); date and place of birth; the approximate date of arrival in the United States; his/her immigration ''A'' number; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records, relatives, sponsors, members of Congress, U.S. Government agencies, overseas processing entities, voluntary agencies, international organizations, and local sources at overseas posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records within this system of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(10), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the **Federal Register**.

[FR Doc. E7–15689 Filed 8–9–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5879]

State-08 Educational and Cultural Exchange Program Records

SUMMARY: Notice is hereby given that the Department of State proposes to alter an existing system of records, State–08, pursuant to the Provisions of the Privacy Act of 1974, as amended (5 U.S.C.(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 9, 2007.

It is proposed that the current system will retain the name ''Educational and Cultural Exchange Program Records.'' It is also proposed that due to the expanded scope of the current system, the altered system description will include revisions and/or additions to the following sections: System Location; Categories of Individuals covered by the System; Authority for Maintenance of the System; and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of such Uses. Changes to the existing system description are proposed in order to reflect more accurately the Bureau of Educational and Cultural Exchange Program record-keeping system, the Authority establishing its existence and responsibilities, and the uses and users of the system.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/ISS/IPS; Department of State, SA–2; Washington, DC 20522–8100. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Educational and Cultural Exchange Program Records, State–08'' will read as set forth below.

Dated: July 9, 2007.

Rajkumar Chellaraj,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–08

SYSTEM NAME:

Educational and Cultural Exchange Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; SA 44; 301 Fourth Street, SW.; Washington, DC 20547.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants, recipients and prospective recipients of Educational and Cultural Exchange grants and programs; members of the J. William Fulbright Foreign Scholarship Board; and American Executive Secretaries of Fulbright Foundations and Commissions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information; project descriptions; evaluations of the performances of former grantees; evaluations of performing artists who may be potential grantees; copies of press releases; new clippings; information related to the grant and related correspondence; academic transcripts; letters of reference; ratings by nongovernmental panel members; insurance vouchers and cards; medical clearance forms; travel itineraries; and confirmation letters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of service).

PURPOSE(S):

The information contained in the records of the Bureau of Educational and Cultural Affairs (ECA) is collected and maintained primarily to aid in the selection of individuals for educational and cultural exchange grants and programs, and for the administration of such grants and programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Educational and Cultural Exchange Program Records is used by: ECA program officers for recordkeeping purposes; relatives when the information is required for the benefit of the subject; and peer review committees from cooperating agencies for the ranking and rating process. The information contained in this system will be used to: (a) Develop statistics for use in the operation of the exchange program; (b) Select individuals for the programs; (c) To advise former and current grantees and program participants of additional program and grant opportunities; (d) Provide information to the news media for promotion of the Fulbright program and to confirm status of grantees; and (e) Disclose information to officials of foreign governments and organizations in vetting the process and selection of participants. Also see the ''Routine Uses'' paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National

Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW.; Washington, DC 20522–8100.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Educational and Cultural Affairs might have records pertaining to themselves should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW,; Washington, DC 20522–8100. The individual must specify that he/she wishes the Bureau of Educational and Cultural Affairs Records to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; and preferably his/her social security number; a brief description of the circumstances that caused the creation of the record, and the approximate dates which give the individual cause to believe that the Bureau of Educational and Cultural Affairs has records pertaining to him/her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records, and from published material and other reference sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–15686 Filed 8–9–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5881]

State-60 Refugee Processing Center Records

SUMMARY: Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–60, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C.(r)), and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 9, 2007.

It is proposed that the current system will retain the name ''Refugee Processing Center Records.'' It is also proposed that due to the expanded scope of the current system, the altered system description will include revisions and/or additions to the following sections: System Location; Categories of Individuals covered by the System; Authority for Maintenance of the System; and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of such Uses. Changes to the existing system description are proposed in order to reflect more accurately the Bureau of Population, Refugees, and Migration record-keeping system, the Authority establishing its existence and responsibilities, and the uses and users of the system.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/ISS/IPS; Department of State, SA–2; Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Refugee Processing Center Records, State-60,'' will read as set forth below.

Dated: July 6, 2007.

Raj Chellaraj,

Assistant Secretary for the Bureau of Administration Department of State.

State-60

SYSTEM NAME:

Refugee Processing Center Records

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Refugee Processing Center, 1401 Wilson Boulevard, Suite 700, Arlington, VA 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for admission to the United States under the U.S. refugee program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records maintained by the Refugee Processing Center are primarily the electronic master records of overseas refugee applications in the Worldwide Refugee Admissions Processing System (WRAPS), data input records related to processing steps performed by the Refugee Processing Center, periodic and ad hoc statistical and case status reports related to refugee processing, systems documentation for WRAPS, WRAPS training materials, and system audit reports. Records previously maintained under STATE–60 by the Refugee Data Center (RDC) in New York have been transferred to the Refugee Processing Center and comprise part of the records described above.

WRAPS includes electronic information on individual applicants for admission to the United States as refugees described under ''Refugee Case Records,'' as STATE–59. The case record is entered or scanned by overseas processing entities under cooperative agreement with the Department of State.

Records categories entered by the Refugee Processing Center include Affidavits of Relationship (AOR); voluntary agency interests; series of alien numbers (A#) transferred by U.S. Citizenship and Immigration Services (USCIS); electronic files with biographic data of refugees referred by the United Nations High Commissioner for Refugees (UNHCR); electronic files from the International Organization for Migration (IOM) with travel information; namecheck and other security clearances from the Bureau of Consular Affairs; and electronic files from voluntary agencies with sponsorship assurance and arrival data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1522(b) (Authorization for Programs for Initial Domestic Resettlement of and Assistance to Refugees); 8 U.S.C. 1157 (Annual Admission of Refugees and Admission of Emergency Situation Refugees); Letter of President Carter of January 13, 1981, 17 Weekly Compilation of Presidential Documents, Pg. 2880 (Refugee Resettlement Grants Program).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Office of Admissions, Bureau of Population, Refugees, and Migration, in the administration of its responsibility for the U.S. refugee admissions program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The primary use of records in this system is to support the Bureau of Population, Refugees and Migration in tracking and managing case processing of applicants for the U.S. refugee program from application through the initial reception and placement in the United States of those individuals approved for resettlement. Centralized electronic storage and retrieval helps

operational managers in the Department and the field identify and resolve processing delays, plan more accurately for refugee arrivals, improve program analysis, and preserve field records in case of evacuation or disasters in overseas processing locations. Only employees of the Refugee Processing Center have unrestricted access to records in this system.

ROUTINE DISCLOSURE OF INFORMATION FROM THESE RECORDS INCLUDES:

(1) To employees and contractors of the Department of State, including the Bureau of Population, Refugees and Migration, overseas processing entities under cooperative agreement with the Department of State, and U.S. embassies or consulates, to coordinate and manage the U.S. refugee admissions program. The level of access to records depends on the user's official function.

(2) To the U.S. Citizenship and Immigration Services (USCIS) to determine the eligibility and admissibility of individuals applying for admission to the United States as refugees.

(3) To the International Organization for Migration (IOM) to arrange appropriate transportation to the United States, including departure and transit formalities.

(4) To the United Nations High Commissioner for Refugees (UNHCR) to coordinate resettlement and protection activities.

(5) To members of Congress or other Federal, State, and local government agencies having statutory or other lawful authority, as needed for the formulation, amendment, administration, or enforcement of immigration, nationality, and other laws of the United States.

(6) See also the ''Routine Uses'' paragraph of the Department's Prefatory Statement published in the **Federal Register** November 10, 2004.

(7) Additional routine uses include:

a. Biographic, educational, employment, and medical information may be disclosed to voluntary agency sponsors to ensure appropriate resettlement in the United States.

b. Statistical and demographic information from these records may be disclosed to state refugee coordinators, health officials, and interested community organizations.

c. Arrival and address information may be disclosed to consumer reporting agencies (31 U.S.C. 3711), debt collection contractors (31 U.S.C. 3718), and the Department of Treasury (31 U.S.C. 3716) to assist in the collection of indebtedness reassigned to the U.S. Government under the refugee travel loan program administered by the International Organization for Migration (IOM).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name, case number, alien number, and sponsor name.

SAFEGUARDS:

All employees of the Department of State and contractor personnel of the Refugee Processing Center have undergone a background security check. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager can monitor and audit trails of access.

RETENTION AND DISPOSAL:

These records will be maintained under existing records schedules approved by the National Archives and Records Administration for Refugee Data Center (RDC) records, STATE–60, until the Department of State receives approval from the National Archives and Records Administration for proposed records schedules for the Refugee Processing Center. More specific information may be obtained by writing to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW.; Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Director; Office of Admissions; Bureau of Population, Refugees and Migration; SA–1, Suite L–505; Department of State; 2401 E Street, NW., Washington, DC 20522.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Admissions might have records pertaining to themselves should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100. The individual must specify that he/she wishes the Refugee Processing Center Records to be checked. At a minimum, the individual should include: name (and any aliases); date and place of birth; the approximate date of arrival in the United States; his/her immigration ''A'' number; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records, relatives, sponsors, members of Congress, U.S. Government agencies, overseas processing entities, voluntary agencies, international organizations, and local sources at overseas posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records within this system of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(10), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the **Federal Register**.

[FR Doc. E7–15691 Filed 8–9–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Madison and Hinds Counties, MS

AGENCY: Federal Highway Administration (FHWA), Department Of Transportation (DOT).

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement will be prepared to study improvements to State Route 22 from Interstate 55 near Canton in Madison County, MS to Interstate 20 near Edwards in Hinds County Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil Vick, Project Development Team Leader, Federal Highway Administration 666 North Street, Suite 105, Jackson, MS 39202–3199, Telephone: (601) 965–4217. contacts at the State and local level, respectively are: Mr. Claiborne Barnwell, Environmental/Location Division Engineer, Mississippi Department of Transportation, 7759 Highway 80 West, Newton, MS 39345, telephone (601) 683–3341.

SUPPLEMENTARY INFORMATION: The FHWA, Mississippi Division Office will serve as the lead Federal agency for this project while the Mississippi Department of Transportation (MDOT) will serve as joint lead agency. The FHWA, in cooperation with MDOT, will prepare an Environmental Impact Statement (EIS) to study potential improvements to the existing State Route 22 (SR 22) corridor. This 40-mile long corridor will be upgraded to Interstate standards. It has logical termini near Canton, MS in Madison County on Interstate 55 and near Edwards, MS on Interstate 20 in Hinds County.

The purpose of the EIS is to address the transportation, environmental, and safety issues of such a transportation corridor. The improved connection will improve mobility and access throughout the Jackson metropolitan area and support economic activity. the highway is proposed as a full control of access facility, and appropriate interchanges will be studied at various locations. Alternatives under consideration include (1) taking no action and (2) build alternatives.

The FHWA and MDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, Native American tribes, private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting with federal, state, and local agencies, and other interested parties will be held in the near future. Public involvement meetings will be held during the EIS process. The draft EIS will be available for public and agency review and comment prior to the official public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Andrew H. Hughes,

Federal Highway Administration, Division Administrator, Mississippi Division, Jackson, Mississippi.

[FR Doc. 07–3907 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Safe Routes to School Task Force to the Secretary of Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meetings of advisory committee.

SUMMARY: This document announces two meetings of the National Safe Routes to School Task Force to the Secretary of Transportation. These are the third and fourth meetings of the Task Force. The purpose of the Task Force is to advise the Secretary of Transportation, through the Federal Highway Administration (FHWA) Office of Safety, on strategies to advance Safe Routes to School (SRTS) Programs nationwide and to encourage children, including those with disabilities, to walk and bicycle to school pursuant to section 1404(h) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005). These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Task Force.

DATES: The third meeting of the Task Force is scheduled for 8:30 a.m. to 5 p.m., m.t., on September 25, and for 8:30 a.m. to 12:30 p.m., m.t., on September 26, 2007. The fourth meeting is scheduled for 8:30 a.m. to 5 p.m., e.t., on November 15, and for 8:30 a.m. to 12:30 p.m., e.t., on November 16, 2007.

ADDRESSES: The third meeting will be held at the Warwick Hotel, 1776 Grant Street, Denver, CO 80203. The fourth meeting will be held at The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Arnade, the Designated Federal Official, Safe Routes to School Program Manager, FHWA Office of Safety Programs, (202) 366–2205 (*Tim.Arnade@dot.gov*); Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Section 1404 of SAFETEA–LU required the Secretary of Transportation to establish a Safe Routes to School (SRTS) Program. The purpose of the program is to enable and encourage children, including those with disabilities, to walk and bicycle to school and to make bicycling and walking to school a safer and more appealing transportation alternative. Section 1404(h) requires the establishment of a National SRTS Task Force. These two meetings are the third and fourth meetings of the Task Force. The first two meetings were held in Washington, DC. The first was held on January 11, 2007, and the second was held on April 19, 2007. Complete minutes from these two meetings are posted on the Web site listed below.

The agenda for the third and fourth meetings will include discussion of strategies to advance SRTS programs nationwide and discussion of a draft report to the Secretary of Transportation.

For the third meeting (in Denver), public comments will be taken at approximately 2:45 p.m., m.t., on September 25. For the fourth meeting (in Washington, DC), public comments will be taken at approximately 2:45 p.m., e.t., on November 15. Further information about the Task Force can be found at *http://www.saferoutesinfo.org/task_force/*. Once a detailed agenda is developed, it will be posted on this Web site. Please note, agenda items are subject to change as priorities dictate.

Conclusion

The third meeting of the National Safe Routes to School Task Force will be held at the Warwick Hotel, 1776 Grant Street, Denver, CO 80203, from 8:30 a.m. to 5 p.m., m.t., on September 25 and from 8:30 a.m. until 12:30 p.m., m.t., on September 26, 2007. The fourth meeting of the National Safe Routes to School Task Force will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024, from 8:30 a.m. to 5 p.m., e.t., on November 15 and from 8:30 a.m. until 12:30 p.m., e.t., on November 16, 2007.

(Authority: Section 1404(h), Pub. L. 109–59; 5 U.S.C., App. II § 1)

Issued on: August 3, 2007.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E7–15744 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: September 13, 2007, 11 a.m. to 2 p.m., Eastern Daylight Time,

and September 20, 2007, 11 a.m. to 2 p.m., Eastern Daylight Time.

PLACE: These meetings will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free numbers and pass codes needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: August 7, 2007.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 07–3942 Filed 8–8–07; 3:11 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–26281; Notice 2]

The Braun Corporation; Denial of Petition for Decision of Inconsequential Noncompliance

The Braun Corporation (Braun) has determined that certain wheelchair lifts it produced in 2005 through 2006 do not comply with paragraph S6.1.3 of 49 CFR 571.403, Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles*. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Braun has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*. Notice of receipt of a petition was published, with a 30-day public comment period, on December 13, 2006, in the **Federal Register** (71 FR 74994). The National Highway Traffic Safety Administration (NHTSA) received no comments. To view the petition and all supporting documents, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter Docket No. NHTSA–2006–26281.

For further information on this decision, contact Ms. Theresa Lacuesta, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–2319, facsimile (202) 493–0073.

Affected are a total of approximately 12,940 model NL, NCL, and NVL platform lifts produced by Braun between July 6, 2005 and July 19, 2006. Specifically, paragraph S6.1.3 of FMVSS No. 403 requires:

> A visual and audible warning must activate if the platform is more than 25 mm (1 inch [1]) below the platform threshold area and portions of a passenger's body or mobility aid is on the platform threshold area defined in S4 when tested in accordance with S7.4.

The threshold warning systems of the noncompliant lifts are unable to detect occupancy throughout the entire platform threshold area defined in paragraph S4. Braun has corrected the problem that caused these errors so that they will not be repeated in future production.

Braun asserts that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Braun explains that ''the sensitivity of the system used to detect occupancy has been found to be diminished through the center of the threshold area.'' Braun also states:

> [I]t is virtually impossible for a wheelchair to transit the entire depth of the threshold warning area without triggering the warning. * * * [A] rolling wheelchair cannot conceivably get to an area of attenuated threshold sensitivity without first triggering the warning. In addition, the rolling wheelchair cannot conceivably roll off the outer end of the threshold warning area without again triggering the warning.

NHTSA Decision

NHTSA initially detected this noncompliance. In NHTSA's tests, the wheelchair test device could be positioned in a significant portion of the platform threshold area without Braun's warning system recognizing its presence, i.e., a warning failed to activate under the conditions of paragraph S6.1.3. (The area in which the presence of the test device was not detected is characterized in this notice as a ''dead zone'' for clarity.)

Braun's petition is based on two incorrect premises, i.e., that only passengers in wheelchairs are protected by the standard, and that the ''dead zone'' in the threshold area does not present a safety risk.

The wheelchair test device specified in FMVSS No. 403 should not be interpreted as an indication that the threshold warning requirements are only intended to protect passengers in mobility aids fitting that description. The safety standard's Scope section states as follows:

> This standard specifies requirements for platform lifts used to assist persons with limited mobility in entering or leaving a vehicle.

More important, the standard itself requires activation of a warning if portions of a passenger's body or mobility aid are on the threshold area (S6.1.3). Therefore, the relevant risks include those to persons whose body part and/or mobility device (e.g., a cane) may move directly to the ''dead zone'' of the threshold area without touching the perimeter of that area. When NHTSA published the standard at 65 FR 46238, it recognized that all types of mobility aids including all designs of manual and powered wheelchairs, scooters, and other devices are used as seats on motor vehicles. Furthermore, at 67 FR 79421, NHTSA indicated that it believes the threshold warning system should reasonably detect the weight of any occupant in a mobility device as well as unattended standing passengers. The standard specifies that the threshold warning system be tested by placing one front wheel of an unloaded wheelchair test device on any portion (including the center) of the threshold warning area without first transiting the perimeter of the threshold area. This weight of one front wheel is considered to be representative of the minimum force exerted by a wheelchair or half the weight of a small child using the lift unattended. Therefore, this test assures that a warning is provided to all standing passengers, including those who may be aided by canes and walkers, and who step into or are standing in the platform threshold area, as well as, persons seated in wheelchairs, scooters and other mobility aids that roll through the threshold area.

Braun suggests that it is virtually impossible for a wheelchair to transit the entire depth of the platform threshold area without triggering the required warning and supports that premise by stating that a rolling wheelchair cannot conceivably get to an area of attenuated threshold sensitivity without first triggering the warning. Braun indicates that, as a result, the noncompliance presents an inconsequential risk.

However, the standard requires that the alarm be activated when the test device is placed on ''any portion'' of the threshold area (S7.4.2), and there is good reason for that requirement. NHTSA's tests demonstrated that the warning would only be activated as the

[1] S6.1.3 states that the warning must activate if the platform is more than 25 mm below the threshold warning area, but it may activate when the platform is at a lesser dimension (e.g., 20 mm below the platform threshold area).

unloaded wheelchair test device was at the inside and outside edges of the threshold warning area and would be deactivated when a wheelchair was in the ''dead zone.'' If a wheelchair was passing through the threshold area, the warning would be activated for only a short period of time and such an intermittent warning could be confusing to a wheelchair user. Also, a passenger's wheelchair may be stopped with its front wheels within the ''dead zone'' of the threshold. If the wheelchair moves forward, it may be so close to the edge of the vehicle floor that the occupant will be unable to react in time to prevent the wheelchair from continuing off the edge of the vehicle floor. Likewise, for a standing passenger who may be aided by a cane or walker, the ''dead zone'' of Braun's threshold warning system could cause the warning to be intermittent and also reduce the timeliness of the warning alarm. Consequently, platform lift users may have inadequate time to stop the wheelchair or cease forward movement before reaching the edge of the vehicle floor when the platform lift is greater than 25 mm below the vehicle floor.

In conclusion, NHTSA believes there is an increased risk that users of the subject Braun lifts could fall from a vehicle and be seriously injured due to: (1) The large size of ''dead zone'' in the platform threshold area and consequent inadequate warning of a significant gap between the vehicle floor and the platform provided by the subject Braun lift; and (2) the short distance between the outside edge of the ''dead zone'' and the outside edge of the vehicle floor and the resultant short reaction time available to persons with limited mobility moving from a position within the threshold ''dead zone.''

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Braun's petition is hereby denied, and the petitioner must notify according to 49 U.S.C. 30118 and remedy according to 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 6, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–15611 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2007–27437; Notice 2]

Grote Industries, LLC; Grant of Petition for Decision of Inconsequential Noncompliance

Grote Industries, LLC (Grote) has determined that the amber reflex reflectors on certain trucks manufactured between 2004 through 2007 do not comply with S5.1.5 of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Grote has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Responsibility and Reports.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Grote also has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of a petition was published, with a 30-day public comment period, on April 9, 2007 in the **Federal Register** (72 FR 17608). The National Highway Traffic Safety Administration (NHTSA) received no comments. To view the petition and all supporting documents, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter Docket No. NHTSA–2007–27437.

For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–2334 or facsimile (202) 366–7002.

Affected are approximately 137,050 reflex reflectors that have been sold for installation as original equipment on trucks and were manufactured between December 28, 2004 and January 22, 2007. S5.1.5 of FMVSS No. 108 requires:

> The color in all lamps, reflective devices, and associated equipment to which this standard applies shall comply with SAE Standard J578c, Color Specification for Electric Signal Lighting Devices, February 1977.

The reflex reflectors do not contain the correct reflective material required to meet the requirements of S5.1.5. Grote claims that it has corrected the problem that caused this error so that it will not be repeated in future production. Grote believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

Grote stated that this noncompliance pertains solely to the failure of these reflex reflectors to meet the applicable color requirements. The subject reflex reflectors were manufactured for Grote by a third-party supplier. The third-party supplier incorporated reflective tape that it purchased from a reflective material supplier. Based on the results of tests conducted for Grote, Grote believes the intermediate supplier had been using retroreflective tape that was manufactured to the specification for ''selective yellow,'' instead of the correct specification for ''amber,'' as set forth in the SAE J578c requirement. The intermediate supplier was operating under a certification letter from the reflective material supplier, which erroneously listed the material as compliant.

Grote believes the failure of these reflex reflectors to meet the color specification does not reduce their effectiveness in providing proper visibility to allow identification of the front and (where applicable) intermediate side points of a vehicle. Grote believes the difference between compliant amber reflex reflectors and the subject noncompliant selective yellow colored reflex reflectors is barely discernible to the naked eye when reflected with ''Illuminant A'' light under conditions of ambient darkness. Grote further stated that such conditions are intended to imitate nighttime driving conditions when reflex reflectors serve their primary purpose.

NHTSA Decision

The following explains our rationale.

NHTSA has found that reflex reflectors make the side of a vehicle visible to drivers of other vehicles at night and at other times when there is reduced ambient light including dawn and dusk. The advance warning provided by the reflex reflectors has the potential to enable drivers to avoid a collision when approaching one another at an angle. The purpose of making the front reflex reflector amber and the rear reflex reflector red is to reveal a vehicle's direction of travel.[1]

As part of its reasoning, Grote stated that while the reflex reflectors do not meet the applicable color provision, incorporated in FMVSS No. 108 by reference to SAE J578c, 1977, they do satisfy the color requirements of a later version of this SAE standard. While compliance with any version other than SAE J578c cannot be substituted as proof of conformity, NHTSA believes the subject reflex reflectors would be perceived to emit a yellow color light and would not cause confusion to motorists regarding the intended safety purposes for which amber reflex reflectors are required. In addition,

[1] An Evaluation of Side Marker Lamps for Cars, Trucks and Buses, July 1983, DOT HS–606–430.

Grote provided test data to demonstrate that the reflex reflectors satisfy the reflectivity requirements specified in SAE J594f, which are also incorporated by reference in FMVSS No. 108. Based on these factors, we believe the subject noncompliance would not cause a significant safety risk to motorists.

NHTSA agrees with Grote that the noncompliance is inconsequential to motor vehicle safety because the nonconforming yellow reflex reflectors are easily distinguished from conforming red reflex reflectors thereby allowing recognition of the vehicle direction of travel.

In consideration of the foregoing, NHTSA has decided that Grote has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Grote's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 6, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–15613 Filed 8–9–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35055]

Dakota, Missouri Valley & Western Railroad, Inc.—Lease and Operation Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway

Dakota, Missouri Valley & Western Railroad, Inc. (DMVW), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR), approximately 45 miles of rail line, known as the Crosby Lines and the Lignite Line.[1] The Crosby Lines consist of a 32.54-mile line of rail from Crosby, ND, at CPR milepost 582.35 (BNSF milepost 89.5), to Lignite Junction, ND, at CPR milepost 550.80 (BNSF milepost 56.96), and three connecting lines that include: (i) A 1.16-mile line from Lignite Junction to Rival, ND, at CPR milepost 549.64; (ii) a 1.07-mile line from Kincaid, ND (BNSF milepost 64.5), to Columbus, ND, at CPR milepost 558.28; and (iii) a 0.49-mile line from Crosby to the original CPR line extending west to Whitetail, MT. The Lignite Line extends from BNSF milepost 47.0 east of Lignite to BNSF milepost 56.96 at Lignite Junction.

DMVW certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. Because the projected annual revenues of the line, together with DMVW's projected annual revenue, will exceed $5 million, DMVW certified on July 12, 2007, that it has served the national offices of the labor unions with employees on the line with a copy of a notice of its intent to undertake this transaction and posted such notice at the workplace of the employees on the affected line on June 28, 2007, and July 3, 2007.

The earliest date this transaction can be consummated is September 10, 2007, the effective date of the exemption (60 days after DMVW certified its compliance with the labor notice requirements of 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than August 31, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35055, must be filed with the Surface Transportation Board, 395 E. Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Edward J. Fishman, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K. Street, NW., Washington, DC 20006–1600.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 3, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–15461 Filed 8–9–07; 8:45 am]

BILLING CODE 4915–01–P

[1] In a related proceeding, STB Finance Docket No. 35068, *Soo Line Railroad Company d/b/a Canadian Pacific Railway—Acquisition and Operation Exemption—BNSF Railway Company,* CPR will be acquiring BNSF Railway Company's (BNSF) interests in the Crosby Line and is the sole owner of the Lignite Line. CPR holds the remaining undivided one-half interest in the Crosby Lines. DMVW previously has operated over the Crosby Lines pursuant to lease agreements with CPR. Upon the consummation of the related proceeding, CPR and DMVW will enter into a new lease allowing DMVW to operate over both lines, which will be under the sole ownership of CPR.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 249X)]

Union Pacific Railroad Company—Abandonment and Discontinuance Exemption—in Plumas and Sierra Counties, CA (Loyalton Industrial Lead)

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to: (1) Discontinue service over 11.07 miles of rail line in Plumas and Sierra Counties, CA, from milepost 0.55 near Hawley to milepost 11.62 near Loyalton; and (2) abandon 0.72 miles of rail line in Sierra County, CA, from milepost 11.62 to milepost 12.34 near Loyalton. The entire line is 11.79 miles and is referred to as the Loyalton Industrial Lead (LIL). The LIL traverses United States Postal Service Zip Codes 96118 and 96122.

UP has certified that: (1) No traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or filed by a state or local government entity acting on behalf of such user) regarding cessation of service over the line is either pending with the Board or any U.S. District Court or has been decided in favor or complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 11, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of

Continued

file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 20, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Gabriel S. Meyer, Assistant General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed a combined environmental and historic report addressing the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 17, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the portion of the line between mileposts 11.62 and 12.34. If consummation has not been effected by UP's filing of a notice of consummation by August 10, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 2, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–15407 Filed 8–9–07; 8:45 am]

BILLING CODE 4915–01–P

Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

Corrections

Federal Register
Vol. 72, No. 154
Friday, August 10, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

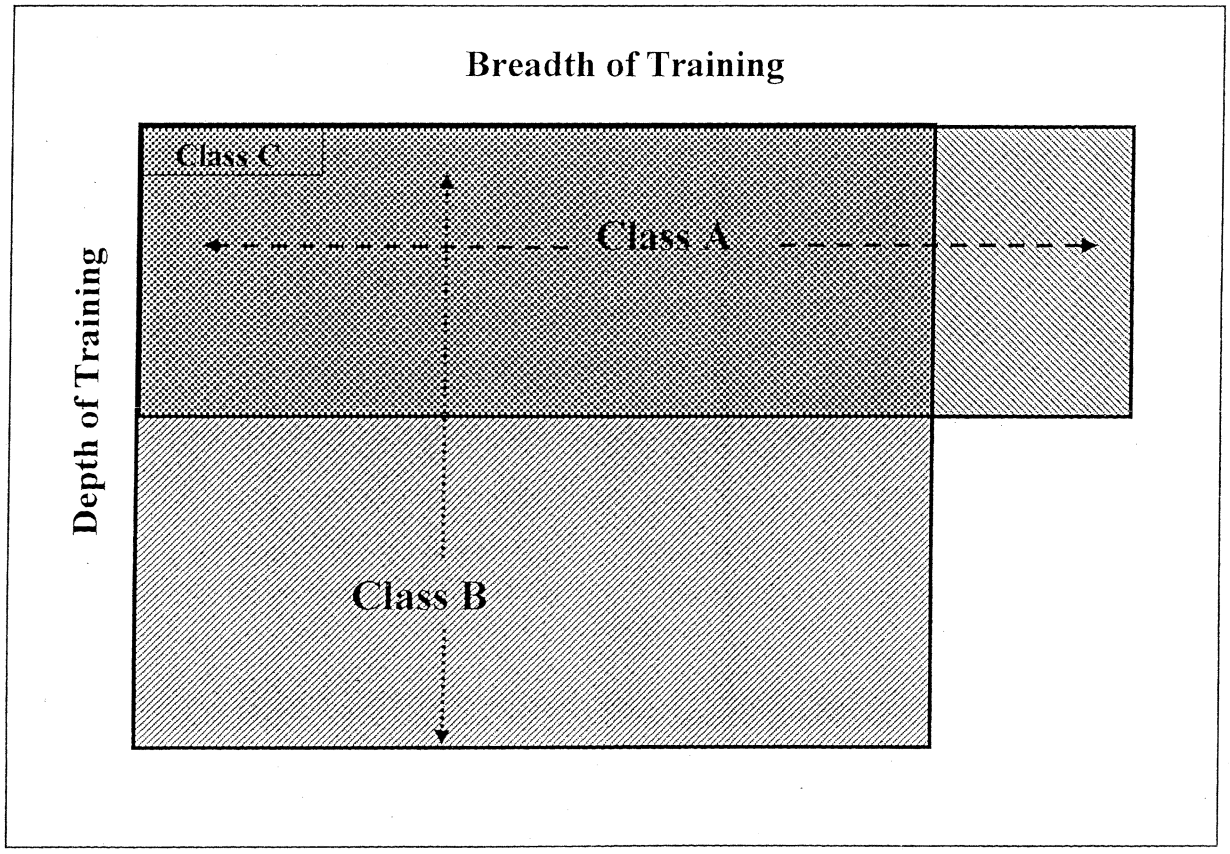
[FRL–8451–6]

Operator Training Grant Guidelines for States; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

Correction

In notice document E7–15493 beginning on page 44523 in the issue of Wednesday, August 8, 2007, make the following correction:

On page 44528, the graphic at the top of the page is being reprinted below.



[FR Doc. Z7–15493 Filed 8–9–07; 8:45 am]
BILLING CODE 1505–01–D



Federal Register

Friday,
August 10, 2007

Part II

Securities and Exchange Commission

17 CFR Part 242
Short Selling in Connection With a Public Offering; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–56206; File No. S7–20–06]

RIN 3235–AJ75

Short Selling in Connection With a Public Offering

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to Regulation M to further safeguard the integrity of the capital raising process and protect issuers from manipulative activity that can reduce issuer's offering proceeds and dilute security holder value. The amendments eliminate the covering element of the former rule.

DATES: *Effective Date:* October 9, 2007.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Associate Director, Josephine Tao, Assistant Director, Elizabeth Sandoe, Branch Chief, Victoria Crane, Branch Chief, and Joan Collopy, Special Counsel, at (202) 551–5720, Office of Trading Practices and Processing, in the Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: We are amending Rule 105 of Regulation M [17 CFR 242.105].

I. Background

Pricing integrity is essential to the capital raising process. A fundamental goal of Regulation M, Anti-Manipulation Rules Concerning Securities Offerings, is protecting the independent pricing mechanism of the securities market so that offering prices result from the natural forces of supply and demand unencumbered by artificial forces.[1] Rule 105 of Regulation M governs short selling in connection with public offerings and concerns short sales that are effected prior to pricing an offering. The rule is particularly concerned with short selling that can artificially depress market prices which can lead to lower than anticipated offering prices, thus causing an issuer's offering proceeds to be reduced.[2] The rule is intended to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity. Rule 105 is prophylactic. Thus, its provisions apply irrespective of a short seller's intent.[3]

Former Rule 105 (''former rule'') prohibited covering short sales effected during a defined restricted period with securities purchased in an offering (''offered securities'').[4] ''Covering'' was the prohibited activity. Specifically, the former rule made it unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the shorter of (1) the period beginning five business days before the pricing of the offered securities and ending with such pricing or (2) the period beginning with the initial filing of such registration statement or notification on Form 1–A and ending with pricing.[5]

In recent years, the Commission has become aware of non-compliance with Rule 105 and, in some cases, strategies used to disguise Rule 105 violations.[6] In particular, the Commission has become aware of attempts to obfuscate the prohibited covering.[7] Due to continued violations of the rule, including a proliferation of trading strategies and structures attempting to accomplish the economic equivalent of the activity that the rule seeks to prevent, the Commission published proposed amendments to Rule 105 for notice and comment.[8]

The Commission proposed to eliminate the covering requirement in order to end the progression of trading strategies designed to hide activity that violated the rule. In particular, the Commission proposed to make it unlawful for a person to effect a short sale during the Rule 105 restricted period and then purchase, including enter into a contract of sale for, such security in the offering.[9] In effect, the proposal imposed an absolute prohibition against purchasing offered securities in firm commitment offerings by any person that effected a restricted period short sale(s).

We received 13 comment letters in response to the Proposing Release from one self-regulatory agency, one issuer, one academic, one investment company, four associations, and five law firms.[10] Some commenters supported the proposal, others opposed it, and some commenters suggested modifications or alternative approaches. We have carefully considered each of the comments. While the comment letters are publicly available to be read in their entirety, we highlight many of the issues, concerns, and suggestions raised in the letters below.

Some commenters were supportive of the proposal and its goals. Comment letters from an issuer and a self-regulatory organization supported the specific proposal to eliminate the rule's covering component and instead prohibit purchasing in the offering.[11] One commenter stated that, ''[t]he proposed amendments to Rule 105 meaningfully address the proliferation of trading strategies and structures, which are designed to disguise prohibited covering activity, by prohibiting any purchase of offered shares by someone who sold short during the restricted period. By eliminating the covering component and expanding the prohibition to all purchases of offered securities, the proposed amendments will efficiently prevent persons from engaging in strategies to avoid the appearance that offering shares are used to cover Rule 105 restricted period short sales.'' [12] In addition, an issuer stated the proposal would ''prevent manipulative activity by those short sellers who inappropriately reap economic gains to the detriment of issuers and selling shareholders who receive reduced

[1] *See* Securities Exchange Act Release No. 54888 (Dec. 6, 2006), 71 FR 75002 (Dec. 13, 2006). (''Proposing Release''). *See also* Securities Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520 (Jan. 3, 1997) (''Regulation M Adopting Release'').

[2] *See* Proposing Release, 71 FR at 75002.

[3] *See id.* at 75003.

[4] Former Rule 105(a) stated, ''[i]n connection with an offering of securities for cash pursuant to a registration statement or a notification on Form 1–A (§ 239.90 of this chapter) filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering if such short sale occurred * * *'' during the applicable Rule 105 restricted period.

[5] *See* former Rule 105(a).

[6] *See* Proposing Release, 71 FR at 75002.

[7] *See id.* at 75004.

[8] *See id.* at 75002.

[9] *See id.*

[10] The comment letters are available on the Commission's Internet Web site at *http://www.sec.gov/comments/s7-20-06/s72006.shtml.* Comment letters were received from (1) Millenium Partners, L.P. dated March 19, 2007 (Millenium letter), (2) Fairfax Financial Holdings Limited dated March 9, 2007 (Fairfax letter), (3) Sullivan & Cromwell LLP dated Feb. 28, 2007 (Sullivan letter), (4) NYSE Regulation, Inc. dated Feb. 27, 2007 (NYSE letter), (5) Cleary Gottlieb Steen Hamilton LLP dated Feb. 16, 2007 (Cleary letter), (6) James J. Angel, PhD., CFA dated Feb. 14, 2007 (Angel letter), (7) Schiff Hardin LLP dated Feb. 14, 2007 (Schiff letter), (8) Securities Industry and Financial Markets Association dated Feb. 13, 2007 (SIFMA letter), (9) Davis Polk & Wardwell dated Feb. 13, 2007 (Davis letter), (10) Managed Funds Association dated Feb. 12, 2007 (MFA letter), (11) Investment Company Institute dated Feb. 12, 2007 (ICI letter), (12) Morgan, Lewis Bockius LLP dated Feb. 12, 2007 (Morgan letter), and (13) International Association of Small Broker-Dealers and Advisers dated Dec. 14, 2006 (IASBDA).

[11] *See* NYSE and Fairfax letters.

[12] NYSE letter.

public offering proceeds.'' [13] Commenters, including commenters that disagreed with aspects of the proposal, supported the goals of protecting independent pricing, bolstering investor confidence in the capital raising process and curbing non-compliance with former Rule 105.[14]

Other commenters voiced opposition to the proposed amendments.[15] One commenter stated that the proposal would: (i) Force investors to make an investment decision at an earlier point in time before an offering price is determined; (ii) allow issuers and underwriters to price offerings without any market counterbalance; and (iii) harm issuers by reducing the number of buyers for certain offerings.[16] This commenter stated, in relevant part, ''I believe that the proposed amendments to Rule 105 would have a deleterious effect on the market for secondary offerings by removing from the price discovery process those investors that pay careful attention to issuers and that the result will be over-optimistic pricing that does not reflect the true value of an issuer's securities. Further, I believe the proposal will harm issuers as they will face greater costs in carrying out their secondary offerings.'' [17] Another commenter stated its belief that the rule as proposed may not achieve, and in fact may be contrary to, the Commission's investor and market protection goals.[18]

In addition to statements of support or opposition to the proposed amendments, commenters also expressed concerns about the universe of potential investors, price discovery, and investment company and investment adviser violations. With respect to the investor pool, commenters believed that the proposal could reduce the number of investors for secondary offerings. One concern was that investors would be forced out of secondary offerings if they effected certain trading strategies that involved short sales during the restricted period.[19] One commenter stated that short sales are ''effected as part of, among other things, initial and dynamic hedging strategies, long/short strategies, convertible arbitrage, bona-fide market making or customer facilitation activities.'' [20] Some commenters noted that preventing persons that effect these strategies during a restricted period from purchasing in an offering minimizes the pool of potential investors and can have a negative effect on price discovery.[21] A second concern raised by some commenters was that investors who had no knowledge of an offering at the time of a short sale would be prohibited from purchasing in the offering.[22] Commenters generally asserted that short sales effected without knowledge of a secondary offering or takedown, such as an ''overnight deal,'' would not be manipulative, yet an investor would be prohibited from participating in the offering under the proposed amendments.[23]

Commenters were also concerned about the impact of the proposed amendments on investment companies and investment advisers.[24] Generally, commenters discussed two possible scenarios. First, there would be a violation of the proposed rule if ''one fund within a fund complex (or a series of a fund) effects a short sale during the five day period and another fund in the same complex (or another series of a fund) purchases the security in the offering. * * *'' [25] Second, commenters were also concerned about proposed rule violations ''if a subadviser to a fund enters into a short sale in a security during the five-day period prior to an offering, and a separate subadviser to the same fund purchases the security in the offering. * * *'' [26] Similarly, in response to a question in the release, commenters suggested incorporating the aggregation unit relief concept of Regulation SHO to Rule 105 for broker-dealers.[27]

Some commenters advocated modifications to the proposed amendments such as confining the rule's application to equity offerings and incorporating the concept of a ''subject'' security from Regulation M so that convertible offerings would not be impacted by the amendments.[28] Commenters also suggested amending the restricted period to incorporate the concept of public announcement of an offering.[29] Another suggestion was to create an exception for certain trading strategies.[30] Another proposed

[13] Fairfax letter.

[14] *See, e.g.*, NYSE letter stating that the proposal will ''bolster investors confidence'' and ''will protect independent pricing mechanisms and price integrity and advance the intent of Regulation M, which is to prevent market manipulation and facilitate offering prices based on the natural forces of supply and demand, unencumbered by artificial influence.'' The NYSE letter further states that it ''applauds the efforts of the Commission in proposing amendments to Rule 105 which will promote market integrity by precluding persons from engaging in manipulative conduct around the pricing of an offering so that markets can be fairly determined by supply and demand without the influence of artificial forces.'' *See also*, Fairfax letter stating ''Fairfax strongly supports the Commission's continued efforts to protect the integrity of the securities markets' independent mechanism for pricing publicly offered securities.'' *See, e.g.*, ICI letter stating that ''the Institute supports the goals of the proposal. * * *'' *See also*, the Millennium letter stating ''Millennium fully agrees with the Commission's stated goals of reducing the risk of manipulation in connection with the pricing of offerings and eliminating 'sham' type arrangements designed to avoid compliance with existing Rule 105.''

[15] *See, e.g.*, Morgan letter.

[16] *See id.*

[17] *See id.*

[18] *See* MFA letter.

[19] *See* SIFMA, Sullivan, MFA, Cleary letters.

[20] Cleary letter.

[21] *See, e.g.*, Davis letter stating that ''[t]rading techniques have gotten more sophisticated and there are numerous strategies that involve short sales * * * Often times these strategies are employed by investors that are interested in a particular issuer and accordingly would otherwise be likely potential purchasers in an offering. By excluding potential investors * * * the proposed rule would interfere with price discovery and potentially adversely impact the pricing of the offering.'' *See also*, SIFMA letter stating ''[m]oreover, by effectively precluding a certain group of investors from receiving an allocation, the proposed changes could negatively affect pricing efficiency and could impact underwriters' decisions on whether to commit to some offerings.''

[22] *See, e.g.*, MFA and Davis letters.

[23] *See, e.g.*, Millenium letter. *See also* Sullivan letter (noting that shelf offerings also would be particularly affected by the proposed amendments since shelf offerings are essentially ''overnight'' deals).

[24] *See* Schiff letter stating that the proposal ''will have a disparate negative and unfair effect on funds advised by registered investment advisers that utilize multiple investment strategies or employ multiple sub-advisers.'' *See also*, ICI letter suggesting that the ''Commission clarify that each individual fund within a fund complex (and each series of a fund), and each subadvised portion of a particular fund, is a separate 'person' for purposes of Rule 105'' or extend the aggregation unit concept set forth in Rule 200(f) of Regulation SHO to funds.

[25] ICI letter.

[26] ICI letter.

[27] *See* MFA, Schiff, and SIFMA letters supporting the expansion of Regulation SHO's aggregation unit concept to registered and unregistered entities. *See also* discussion regarding aggregation units in Section II below.

[28] *See, e.g.*, SIFMA letter.

[29] *See, e.g.*, Davis letter recommending ''that the restricted period not commence until the later of public announcement of the offering or five business days before pricing.'' *See also*, SIFMA letter suggesting that the restricted period ''not begin earlier than the point of public announcement of the offering.'' *See also*, Fairfax letter stating that ''[f]airfax recommends that, instead of the current pre-set five day restricted period, the restricted period should be the lesser of ten days and the period between public announcement and pricing.''

[30] *See, e.g.*, MFA suggesting exceptions for bona fide arbitrage and bona fide hedging. *See also*, SIFMA letter suggesting exceptions for ''(i) convertible arbitrage; (ii) merger arbitrage; (iii) volatility trading; (iv) long/short strategies; (v) other hedging strategies; and (vi) bona-fide market making and customer facilitation activities.'' *See also*, Cleary letter suggesting an exception for among other things, ''bona fide hedging activities conducted in accordance with pre-established trading strategies.''

However, one issuer was opposed to such an exception stating that, ''[h]edging strategies, including hedging by option market markers, should not be permitted in an issuer's securities during the restricted period if the hedging involves receiving securities purchased from the issuer in its public offering. Fairfax respectfully submits that if

Continued

modification was an exception based on the Rule 101 exception for actively traded securities.[31] Many commenters supported an exception raised by a question in the Commission's Proposing Release to allow restricted period short sellers to participate in an offering if they covered such short sale(s) with a bona fide purchase prior to the offering.[32] However, some commenters were opposed to creating exceptions that would undercut the rule's prophylactic nature.[33]

Furthermore, in response to questions raised in the Proposing Release, some commenters felt that Rule 105 should not address derivatives,[34] PIPE transactions,[35] long sales,[36] convertible offerings,[37] or best efforts offerings.[38] Many commenters also were opposed to the question in the Proposing Release as to whether we should require underwriters to obtain certifications from investors stating that they had not sold short during the restricted period.[39] Other commenters sought additional interpretive guidance with respect to former Rule 105 instead of amending the rule.[40]

After considering the comments received and the purposes underlying Rule 105, we are adopting the amendments with some modifications to refine provisions and address commenters' concerns as discussed below.[41]

II. Discussion of Amendments

The amendments are carefully and narrowly tailored to further the anti-manipulation goals of Rule 105 by ending the progression of strategies designed to conceal the covering of restricted period short sales with offered securities without unduly expanding the scope of the rule or unnecessarily restricting the pool of secondary and follow-on offering purchasers. The amended rule seeks to achieve this goal by eliminating the covering element of the former rule. However, in response to comments, as adopted, amended Rule 105 refines the amendment as proposed in several aspects, including limiting its application to equity offerings, and adding a ''bona fide purchase provision'' that allows a restricted period short seller to participate in an offering. The amended rule also includes new exceptions concerning separate accounts and investment companies. The exception for separate accounts allows a person to purchase the offered securities in an account where there was a short sale in another account if decisions regarding securities transactions for each account are made separately and without any coordination of trading or cooperation among or between the accounts. The exception for certain investment companies allows an investment company to participate in an offering if an affiliated investment company or any series of such investment company sold short during the restricted period.

The proposed amendments would have imposed an outright ban on purchasing offered securities if a person sold short during a restricted period. The amended rule refines that approach. As proposed and as adopted, the amendment changes the prohibited activity from covering to purchasing the offered security, in order to put an end to strategies that obfuscated the prohibited covering but replicated its economic effect.[42] However, the amended rule also includes the three exceptions.

Generally, the offering prices of follow-on and secondary offerings are priced at a discount to a stock's closing price prior to pricing. This discount provides a motivation for a person who has a high expectation of receiving offering shares to capture this discount by aggressively short selling just prior to pricing and then covering the person's short sales at the lower offering prices with securities received through an allocation.[43] Covering the short sale with a ''specified amount of registered offering securities at a fixed price allows a short seller largely to avoid market risk and usually guarantee a profit.'' [44] Eliminating the covering component and prohibiting a purchase in the offering in amended paragraph (a) reduces a potential investor's incentive to aggressively sell short prior to pricing solely due to the anticipation of this discount. Such activity can exert downward pressure on market prices for reasons other than price discovery that result in lowered offering prices and therefore reduced offering proceeds to issuers and selling security holders.[45] The prohibition on purchasing offered securities also provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M.[46]

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the hedging is bona fide then any short covering can be done using open market purchases. There is no hedging justification that warrants encumbering issuers' capital realization or that sufficiently outweighs the issuer's need for market prices and offering prices that are unencumbered by artificial and manipulative forces.'' Fairfax letter.

[31] *See, e.g.*, Cleary letter, suggesting an exception for securities that are actively-traded within the meaning of Rule 101(c)(1) of Regulation M.

[32] *See* Morgan, Sullivan, Davis, SIFMA and MFA letters suggesting that an investor that sells short during the restricted period should be able to cover such short sales prior to the offering and participate in the offering. Other commenters were opposed to such an exception. *See, e.g.*, Fairfax letter stating that, ''covering restricted period short sales in advance of pricing would not necessarily cure any manipulative impact of the short sales if the covering purchases have no mitigating effect on an underwriter's decision to lower an offering's price (*e.g.*, if the purchase is made immediately prior to pricing such that there is no opportunity for market reaction to the purchase in order to dissipate any downward impact from the short sale).''

[33] *See, e.g.*, NYSE letter.

[34] *See, e.g.*, MFA letter.

[35] *See, e.g.*, SIFMA and MFA letters.

[36] *See, e.g.*, SIFMA and Morgan letters.

[37] *See, e.g.*, SIFMA letter.

[38] *See, e.g.*, SIFMA letter, noting that exchange-traded funds (ETFs) are non-firm commitment offerings that ''do not involve the type of discount which provides a motivation to 'capture the discount by aggressively short selling just prior to pricing,' and, as a result, do not raise the policy concern that the proposed rule changes are intended to address.'' *See also* Morgan and Cleary letters.

[39] *See, e.g.*, SIFMA letter. However, one commenter was not opposed to that concept. *See* Millennium letter.

[40] *See, e.g.*, Morgan letter suggesting that ''a far better approach would be for the Commission to provide additional guidance to the investing community regarding the specific means that it believes would result in compliance with existing Rule 105.''

[41] We note that certain issues discussed in the Proposing Release and comment letters have not been incorporated into amended Rule 105 at this time. However, the Commission intends to monitor whether further action is warranted. For example, amended Rule 105 continues to retain the exception for best efforts offerings. If we become aware of potentially manipulative short selling prior to the pricing of best efforts offerings or other concerns with this exception, the Commission may re-evaluate this exception. By way of another example, PIPEs generally did not fit within the elements of former Rule 105. One reason for this is that PIPEs are typically not conducted on a firm commitment basis. PIPE offerings not conducted on a firm commitment basis continue to be excepted from Rule 105, however other areas of the securities laws continue to apply to PIPE offerings. *See e.g., SEC* v. *Hilary L. Shane*, Lit. Release No. 19227 (May 18, 2007).

[42] Obfuscating the prohibited covering is one way that persons have attempted to conceal Rule 105 violations. Derivatives have also been used to conceal Rule 105 violations by attempting to disguise a short sale as a long sale. *See e.g., Commission Guidance on Rule 3b–3 and Married Put Transactions,* Securities Exchange Act Release No. 48795 (Nov. 17, 2003), 68 FR 65820 (Nov. 21, 2003) (''Married Put Release''). The Commission will continue to scrutinize the use of derivatives and other attempts to conceal Rule 105 violations.

[43] *See* 71 FR 75003.

[44] *Id.*

[45] *See* Fairfax letter stating that they ''experienced a decline in the price of a security well in excess of 3% during the period between the public announcement of an offering and the pricing of such offering.''

[46] The Commission cautions that any transaction or series of transactions, whether or not subject to the provisions of amended Rule 105, continue to be subject to the anti-fraud and anti-manipulation provisions of the federal securities laws. Moreover, we remind persons intending to purchase securities in any registered secondary or follow-on offering that selling short the same securities prior to the offering continues to be subject to the registration requirements of Section 5 of the Securities Act of 1933. *See, e.g., SEC* v. *Friedman, Billings, Ramsey & Co., Inc., et al.*, Civil Action No. 06–CV–02160 (D.D.C.) at *http://www.sec.gov/litigation/litreleases/*

A. Bona Fide Purchase Exception

In response to commenters' concerns, the amended rule adds a provision that allows restricted period short sellers to purchase the offered securities if they make a bona fide purchase of the same security prior to pricing.[47] This provision advances the goals of facilitating offering price integrity and protecting issuers from potentially manipulative activity, while not unduly restricting capital formation or short sales. The provision provides that persons can purchase offered securities even if they sell short during the Rule 105 restricted period if they make a purchase equivalent in quantity to the amount of the restricted period short sale(s) prior to pricing.[48] This provides an opportunity for a trader who had no knowledge of an offering at the time of his short sale to participate in the offering. Thus, a person who did not intend a strategy of shorting into an offering has an opportunity to participate in the offering, provided the person complies with the provision. The amendments also preserve a person's ability to change his or her mind. For example, a person may initially decide not to participate in an offering, and in doing so, may sell short during the Rule 105 restricted period. If that person subsequently decides to participate in the offering after selling short during the Rule 105 restricted period, the bona fide purchase provision provides an opportunity to do so.

In order to take advantage of this exception, the rule requires there to be a bona fide purchase of the security that is the subject of the offering.[49] While the determination as to whether a purchase is a bona fide purchase will depend on the facts and circumstances, we note that any transaction that, while made in technical compliance with the exception, is part of a plan or scheme to evade the Rule, for example, a transaction that does not include the economic elements of risk associated with a purchase for value, would not be bona fide for purposes of amended Rule 105.[50]

The purchase must be at least equivalent in quantity to the entire amount of the Rule 105 restricted period short sale.[51] Partial purchases are insufficient. This condition is designed to help ensure that the person is making a bona fide purchase rather than simply a purchase to evade Rule 105's prohibitions. For example, the provision is not available if during a Rule 105 restricted period a person sells short 1,000 shares of common stock, subsequently purchases 500 shares of common stock prior to pricing, and then purchases 500 shares of common stock in the offering. The 500 share pre-pricing purchase is not equivalent in quantity to the entire amount of the Rule 105 restricted period short sale. Thus, the provision is unavailable. In that scenario, the person violated amended Rule 105 by short selling 1,000 shares during the Rule 105 restricted period and purchasing the offered security.

The provision also requires that the person effect the bona fide purchase during regular trading hours [52] and that the bona fide purchase is reported pursuant to an effective transaction reporting plan.[53] This is designed to ensure transparency of the activity to the market so that the effects of the purchase can be reflected in the security's market price. Next, the bona fide purchase must be made after the last Rule 105 restricted period short sale and prior to pricing.[54] Purchases made during the Rule 105 restricted period but before the last Rule 105 restricted period short sale do not qualify as a bona fide purchase for purposes of this provision. Requiring the bona fide purchase to be made after the last Rule 105 restricted period short sale facilitates the dissipation of downward pressure exerted by short selling and allows any downward pressure to be offset by upward price pressure exerted by the purchase. It also helps to ensure that the person effected a bona fide purchase for purposes of closing out a short sale position.

The bona fide purchase also must occur prior to pricing to allow market reaction to the purchase before an offering is priced.[55] In addition, the bona fide purchase must occur no later than the business day prior to the day of pricing.[56] The element that the bona fide purchase occur no later than the business day prior to the day of pricing also allows an opportunity for market reaction prior to pricing an offering.[57] For example, if an offering is priced on Wednesday after the close of regular trading hours, the bona fide purchase could not be made during regular trading on Wednesday. Therefore, this provision may not be available in a truly ''overnight deal'' when an offering commences after the close of regular trading on the day of pricing.[58] However, this is not an impediment to participating in an overnight deal (or shelf offering) [59] for potential investors who did not short sell the security that is the subject of the offering during the Rule 105 restricted period.

Although it would not be available to some investors in this situation, the bona fide purchase provision is available to potential investors in many other scenarios. For example, a person could use the bona fide purchase provision if a Rule 105 restricted period commenced on Monday and ended with pricing on Friday and that person sold short on Tuesday before becoming aware of the offering on Wednesday. That person could make bona fide purchase on Thursday as the last business day before pricing on Friday. The bona fide purchase provision would also be available in that situation if that person continued to sell short on Wednesday after becoming aware of the offering. The provision would still be available to that person if the person effected additional short sales on Thursday prior to making a bona fide purchase on Thursday. Thus, the bonafide purchase provision is available so long as the conditions specified in the amended rule are satisfied.

The condition that the bona fide purchase occur no later than the business day prior to the day of pricing

2006/lr19950.htm and *http://www.sec.gov/litigation/complaints/2006/comp19950.pdf* (alleging short selling CompuDyne stock prior to the effective date of the resale registration statement and covering those short sales with shares of CompuDyne stock purchased from FBR's customers who obtained shares in the PIPE offering).

[47] Amended Rule 105(b)(1).

[48] In the Proposing Release, we had solicited specific comment as to whether the proposed rule should provide an exception to allow persons who effect a restricted period short sale to purchase offered securities in certain described circumstances, including any alternatives, and also whether such an exception should include a documentation requirement to demonstrate compliance. *See* 71 FR at 75006.

[49] Amended Rule 105(b)(1)(i).

[50] *See, e.g.*, discussion regarding sham transactions in Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (Aug. 6, 2004); *see also* Married Put Release, *supra* note 42.

[51] Amended Rule 105(b)(1)(i)(A).

[52] Amended Rule 105(b)(1)(i)(B).

[53] Amended Rule 105(b)(1)(i)(C).

[54] Amended Rule 105(a)(1)(i)(D).

[55] *Id.*

[56] *Id.*

[57] Amended Rule 105(b)(1). *But see* NYSE comment letters stating that ''[s]hort sales have the effect of driving down the price of a security even if covered in the open market.'' *See* Fairfax letter stating ''[m]oreover, covering restricted period short sales in advance of pricing would not necessarily cure any manipulative impact of the short sales if the covering purchases have no mitigating effect on an underwriter's decision to lower an offering's price * * *.''

[58] For example, if an offering is priced after the close of regular trading on Tuesday and underwriters begin to contact potential investors to purchase in the offering on Tuesday evening after pricing, the bona fide purchase provision is not available to those investors. It would not be possible for a bona fide purchase to be effected because the last business day prior to the day of pricing would have already occurred.

[59] *See* Sullivan letter.

gives the market an opportunity to consider and react to both the Rule 105 restricted period short sales and the bona fide purchase. It provides the market with an opportunity to consider a trading day uninfluenced by a person with a heightened incentive to manipulate.

In addition, a person relying on this provision may not effect a Rule 105 restricted period short sale within the 30 minutes before the close of regular trading hours on the business day prior to the day of pricing.[60] This condition guards against potentially manipulative activity near the close of trading that can lower offering prices and, thereby reduce an issuer's offering proceeds, by influencing market price, including the following day's opening price.

B. Separate Accounts and Investment Company Exceptions

In the proposing release, we asked whether the principles for independent trading unit aggregation that the Commission set out in Regulation SHO Rule 200(f) should be extended to non-broker-dealers, such as investment companies, and asked about appropriate criteria.[61] Under Rule 200 of Regulation SHO and its predecessors,[62] a person has to aggregate all of its positions to determine whether it is net long or short. The Commission, however, permits independent trading unit aggregation within the same broker-dealer under certain conditions.

In the Adopting Release for Regulation SHO, we noted that the conditions required for independent trading unit aggregation were adopted to limit the potential for trading rule violations through coordination among units and are designed to maintain the independence of the units.[63] We believe the principles for independent trading unit aggregation should be used to address concerns expressed by commenters about the proposed rule. Specifically, commenters to the Rule 105 proposing release expressed concerns stemming from the Commission's use of the term ''person'' in the proposal. The proposed rule would have prohibited ''any person'' from purchasing in an offering if they effected restricted period short sales. Although the former rule also used the word ''person,'' commenters stated that eliminating the covering element could, for funds with multiple independent accounts, ''create difficulties for funds effecting transactions in securities that are the subject of offerings.'' [64]

Commenters expressed concern that the term ''person,'' for purposes of the proposed rule, might encompass each fund within a fund complex, each series of a series fund, or each subadvised portion of a single fund. Commenters stated that, as a result, the proposed rule might prohibit one fund within a fund complex (or a series of a fund) from purchasing offered securities if another fund in the same complex (or another series of a fund) sold short within the Rule 105 restricted period even where those funds (or series of a fund) were trading independently. Commenters also stated that the proposal would trigger a Rule 105 violation if a sub-adviser to a portion of a fund purchased offered securities after another sub-adviser to a different portion of the same fund sold short during the restricted period even if those sub-advisers were not coordinating their trading. Thus, commenters stated that we should treat funds within a fund complex, different series of a fund, and separate subadvised portions of a fund as independent for purposes of Rule 105. Commenters also stated Regulation SHO's concept of independent trading unit aggregation should be expanded to unregistered entities.[65]

In light of our solicitation of comment on the questions whether the principles for independent trading unit aggregation should be extended, and under what criteria, and in response to comments received, we have determined to apply the principles to Rule 105 for separate accounts in circumstances where the decisions regarding securities transactions are made separately and without coordination of trading or cooperation.[66] In addition, we have included an exception to address commenters' concerns regarding funds within the same fund complex and different series of a fund.[67]

1. Separate Accounts

We are adopting an exception that will permit a purchase of the offered security in an account of a person where such person sold short during the Rule 105 restricted period in a separate account, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between the accounts. This exception incorporates the principles of Rule 200(f) of Regulation SHO that permit a registered broker or dealer to treat non-coordinating units separately.

Rule 105 is directed at persons who short sell into an offering because they have a high likelihood of receiving discounted offering shares. These persons have a special incentive to sell short and thus do not contribute to efficient pricing. Where an account that sells short is not the account that purchases shares in the offering, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between the accounts even though the accounts may be affiliated or otherwise related, the incentive that motivates the Rule 105 violation is not present because the short seller cannot lock in a profit by purchasing the discounted offering shares. The exception is, therefore, narrowly tailored to address the abuses that Rule 105 is designed to prevent without triggering inadvertent violations by accounts that do not coordinate their trading activity.

Indicia of Separate Accounts. For purposes of this exception, accounts are separate and operating without coordination of trading or cooperation if:

(1) The accounts have separate and distinct investment and trading strategies and objectives;

(2) Personnel for each account do not coordinate trading among or between the accounts;

(3) Information barriers separate the accounts, and information about securities positions or investment decisions is not shared between accounts;

(4) Each account maintains a separate profit and loss statement;

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[60] Amended Rule 105(b)(1)(ii).

[61] Rule 200 of Regulation SHO provides that, in order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Rule 200(f) of Regulation SHO provides that independent trading unit aggregation is available only if: (1) The broker or dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective(s), and supports its independent identity; (2) Each aggregation unit within the firm determines, at the time of each sale, its net position for every security that it trades; (3) All traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit; and (4) Individual traders are assigned to only one aggregation unit at any time.

[62] *See, e.g.*, Rule 3b–3.

[63] Securities Exchange Act Release No. 50103 (July 28, 2004) 69 FR 48008 at 48011 (Aug. 6, 2004) (Regulation SHO Adopting Release).

[64] *See, e.g.*, ICI letter. We note that we use the term ''account'' as a general term that may encompass the separate accounts that commenters described in many different ways including ''portions of a particular fund'' (ICI letter), ''unit'' (MFA and SIFMA letters), ''departments'' (SIFMA letter) and ''identifiable divisions'' (SIFMA letter).

[65] *See e.g,* MFA, Schiff, SIFMA, and Millenium letters.

[66] For example, two sub-advised portions of the same registered investment company may be separate accounts.

[67] Amended Rule 105(b)(3).

(5) There is no allocation of securities between or among accounts; and

(6) Personnel with oversight or managerial responsibility over multiple accounts in a single entity or affiliated entities, and account owners of multiple accounts, do not have authority to execute trades in individual securities in the accounts and in fact, do not execute trades in the accounts, and do not have the authority to pre-approve trading decisions for the accounts and in fact, do not pre-approve trading decisions for the accounts.

Depending on the facts and circumstances, accounts not satisfying each of these conditions may nonetheless fall within the exception if the accounts are separate and operating without coordination of trading or cooperation. Policies and procedures reasonably designed to ensure that the above safeguards are fully implemented would be indications that accounts are separate, as would regular reviews to help ensure that such policies and procedures are up to date and fully implemented. For example, such reviews may include reviewing activities that are indicative of coordination between accounts and reviewing trading activity of a particular account that does not appear to be consistent with the stated strategy or objectives of such account.

We believe that accounts that have separate and distinct investment and trading strategies and personnel that are prohibited from coordinating trading between or among accounts would be considered to make separate decisions regarding securities transactions for purposes of Rule 105.[68] These two factors are similar to the requirements of Regulation SHO Rule 200(f)(1) and (3). We believe that these factors are important indicators that accounts are separate for purposes of the exception. Thus, if trading is coordinated between accounts, the accounts will not be considered separate for purposes of this exception.

We believe that to meet the requirements of the exception there can be no communication of securities positions, investment decisions or other trading matters between accounts.[69] Information barriers, similar to information barriers required for registered broker-dealers under Section 15(f) of the Securities Exchange Act of 1934 (''Exchange Act''), will also inhibit coordination and help maintain the separation of accounts. Information leakage, which can occur for various reasons such as close proximity of trading desks or because traders are unaware that they should not pass information between or among accounts, can give rise to either deliberate or inadvertent coordination of shorting into an offering. Similarly, the sharing of personnel with decision-making authority regarding trading activities in different accounts may lead to information leakage, whether deliberate or inadvertent, between or among accounts. Information barriers should include, at a minimum, appropriate physical barriers as well as training for all personnel.

In the case of an owner of multiple separate accounts, information barriers may not be necessary so long as the account owner is not influencing the trading decisions, i.e., the owner does not allocate securities between or among accounts; has no authority to execute trades in individual securities in the accounts; and has no authority to pre-approve trading decisions for the accounts.

Another indicator that accounts are separate is the maintenance of separate profit and loss statements for each account. While an entity may also want to ensure that accounts have separate legal identities and separate taxpayer identification numbers, we believe that maintaining separate profit and loss statements indicates that an account is operating separately from other accounts, and is being treated by common management as separate.

Another factor that indicates separateness is restricting personnel with management or oversight responsibilities over the entity from allocating securities between or among accounts. This factor is designed to ensure that when one account receives an offering allocation after the other account sells short, the offering allocation is not transferred to the account that sold short. Such a transfer would be contrary to the exception, which is that accounts be separate and free of coordination or cooperation among or between other accounts.

A further factor that indicates separateness is restricting a person with oversight or managerial responsibility over multiple separate accounts from having authority to execute trades in individual securities in the accounts or the authority to pre-approve trading decisions for the accounts and such person does not execute trades for the account and does not pre-approve trading decisions for the accounts. This is designed to ensure non-coordination by a single person with control over multiple accounts. Thus, such person may neither direct an account to sell short during the restricted period, nor direct another account to purchase securities in an offering. In some circumstances, the manager may receive allocations and his allocating offering shares to an account that has a restricted period short sale would be a violation of Rule 105. If allocation of the offered securities is effected by a formula or predetermined basis, an account that has a restricted period short sale must not receive the offering shares.

Examples of persons eligible for the separate account exception include:

- An individual investor who invests capital in two or more accounts and grants full discretionary trading authority to the respective managers of each account, if the individual investor cannot coordinate trading between the accounts or make investment decisions for the accounts, and the managers do not coordinate trading between the accounts.
- An adviser that provides capital to two or more advisers or two private investment funds, if the funds are separate legal entities, maintain different accounts and separate profit and loss statements, and do not coordinate trading or share information or allocate securities between the accounts.
- A money manager that provides capital to two separate advisers, if the funds managed by the advisers are separate legal entities, competitive with one another, maintain different accounts and separate profit and loss statements, and do not coordinate trading or share information or allocate securities.
- An adviser that operates a black box using a trading algorithm, if the black box is separate from another black box or another trading unit.

We note that a fund that invests in multiple funds and owns shares of each fund rather than shares of each fund's underlying investments will likely not need to rely on this exception when one of the multiple funds sells short during the restricted period and another one purchases offered securities. In such cases, the shares of each fund are different securities from the underlying securities. For example, a hedge fund that invests in several other, unaffiliated hedge funds and does not coordinate the trading activity of these funds would not violate Rule 105 if a particular hedge fund in which the fund invested may have sold short underlying securities during a restricted period and another hedge fund in which the fund has invested purchased securities in a subsequent offering.

Some registered investment companies retain multiple investment

[68] *See, e.g.*, Millenium letter; Schiff letter.

[69] Commenters believed that information barriers were important to ensure separation of accounts *See, e.g.*, Millenium and Sullivan letters.

sub-advisers whose activities are subject to the supervision of a single, primary investment adviser. In such instances, each sub-advised portion of that fund or series may be able to rely on the exception in amended Rule 105(b)(2). In particular, if a sub-adviser to a registered fund, or a series of that fund, engages in a short sale of a security while another sub-adviser to the same fund or series goes long in that security through an offering enumerated in the rule, those decisions would be viewed as being made separately and without coordination of trading or cooperation among or between the sub-advised portions, provided that the sub-advisers met the elements of Rule 17a–10(a)(1)–(2) under the Investment Company Act of 1940 (''Investment Company Act''), and provided further that the fund's, or series', primary investment adviser does not execute trades in individual securities, and does not pre-approve trading decisions for the sub-advised portions.

We believe the exception provides a carefully honed response to the comments we received on this issue. The factors regarding separateness are provided to assist entities in determining whether they qualify for the exception. We note that these factors are not exhaustive, and persons otherwise may be able to rely on this exception. We understand that there may be other types of structures and entities that have safeguards and protections that fall within the exception. In addition, we will consider specific requests for exemptive relief on a case-by-case basis.

We will closely monitor whether use of the exception in any way undermines the purposes of Rule 105, and will consider whether further guidance or changes to the exception are appropriate. We note that an entity that does not comply with the exception may be in violation not only of Rule 105, but also the antifraud provisions. For instance, evidence of coordination, cooperation, or attempts to circumvent the rule or hide coordinated or cooperative activity could be evidence of fraud or manipulation for purposes of Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

2. Investment Companies

In adopting Regulation SHO, we noted that the conditions required for independent trading unit aggregation were adopted to limit the potential for abuse associated with coordination among units and are designed to maintain the independence of the units.[70] The fact that brokers and dealers are subject to the oversight of self-regulatory organizations and have compliance responsibilities with regard to supervisory procedures and books and records requirements provided additional assurances that the Commission's concerns would be addressed.

Similarly, provisions of the Investment Company Act generally prohibit concerted action between funds in a complex and between different series of the same fund. Section 17(d) of the Investment Company Act and Rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, and the affiliates of that affiliated person, acting as principal, from participating in any joint enterprise, or other joint enterprise or arrangement with their affiliated investment company. Funds in the same investment company complex will generally be affiliates of each other.[71] An arrangement by which one fund sells a security short while another affiliated fund intentionally goes long to cover that position would generally be the type of joint arrangement that is prohibited by Section 17(d) and Rule 17d–1. As a result, Section 17(d) and Rule 17d–1 would prevent these persons from engaging in activities that the amended rule 105 seeks to prohibit.

Rule 105 is directed at persons who sell short into an offering because they have a high expectation of receiving discounted offering shares. These persons have a heightened incentive to sell short to affect the price of the offered securities that they intended to purchase in order to lock in a profit. However, if the account that sells short during the restricted period is prohibited from concerted action with the account that purchases in the offering, the ability to lock in a profit from selling short prior to pricing and purchasing the offered securities is not present.

Thus, in response to comments, we are including an exception in amended Rule 105 related to registered investment companies. Under this exception, an individual fund within a fund complex, or a series of a fund, will not be prohibited from purchasing the offered security if another fund within the same complex or a different series of the fund sold short during the Rule 105 restricted period.[72]

By applying Regulation SHO's aggregation unit concept in this manner, we believe we have addressed commenters' concerns regarding the amended rule's scope with respect to investment companies registered under the Investment Company Act and accomplished the goals of Rule 105, the prevention of manipulation and the facilitation of offering prices based on the natural forces of supply and demand.

C. Additional Amendments

The amendments modify paragraph (a) of the former rule in several other ways. First, the amendment refines the scope of the rule by restricting its application to offerings of ''equity'' securities for cash. The former rule was silent as to the rule's application solely to ''equity'' securities. However language in Rule 10b–21, the predecessor to Rule 105, did limit application of the rule's prohibitions to short sales of ''equity securities of the same class as securities offered for cash'' and the Commission, in adopting Rule 105, did not express its intent to alter the reach of the rule beyond equity securities.[73] We received comment on the Proposing Release suggesting that including debt securities in the rule is unnecessary because debt securities are less susceptible to manipulation.[74] According to commenters, this is because debt securities trade more on the basis of factors such as yield and credit rating and are priced on factors such as interest rates, and short sales of debt securities prior to pricing of a debt offering are not common.[75] Although the amendments clarify the scope of the rule to apply only to ''equity'' securities, the Commission intends to continue to monitor whether trading patterns in debt securities raise manipulative concerns in connection with debt offerings. We also received comment on the Proposing Release suggesting that the proposal be modified to include an exception for actively-traded securities within the meaning of Rule 101(c)(1) of

[70] Regulation SHO Adopting Release, 69 FR at 48011.

[71] *See, e.g.*, Steadman Security Corp., 46 S.E.C. 896, 920 n.81 (1977) (''the investment adviser almost always controls the fund. Only in the very rare case where the adviser's role is simply that of advising others who may or may not elect to be guided by his advice * * * can the adviser realistically be deemed not in control.'').

[72] Where there are multiple subadvisers to the same fund or series, each sub-advised portion of that fund or series may be able to rely on the exception in amended Rule 105(b)(2) for separate accounts, for example, if each sub-adviser relies on and acts consistently with rules or exemptions that require the implementation of contractual provisions prohibiting consultation between subadvisers.

[73] Former Rule 10b–21.

[74] *See, e.g.*, SIFMA letter.

[75] *See e.g.*, Id. This commenter also noted that including debt securities in the amended rule would be inconsistent with the overall limited application of Regulation M's prohibitions to debt securities. *See id.*

Regulation M.[76] However, many of the securities that were involved in the enforcement cases brought by the Commission alleging violations of former Rule 105 far exceeded the public float value in the Regulation M ''actively-traded'' threshold level (that is, having an average daily trading volume value of at least $1 million and a public float value of at least $150 million).[77] Moreover, we believe that the bona fide purchase provision will address commenters' concerns for additional flexibility for actively-traded securities without having to carve out an additional exception for such securities.

The amendments also encompass offerings made pursuant to Form 1–E, Notification under Regulation E. Regulation E exempts from registration under the Securities Act of 1933 (''Securities Act'') securities issued by registered small business investment companies or by investment companies that have elected to be regulated as business development companies pursuant to Section 54(a) of the Investment Company Act.[78] Regulation E was originally patterned after Regulation A under the Securities Act.[79]

We have long recognized the danger posed by market participants using securities obtained pursuant to an offering under Regulation A to cover short positions.[80] We asked the following question in the Proposing Release: Regulation E under the Securities Act provides certain small business investment companies and business development companies with a registration exemption that is similar to Regulation A. Should Rule 105 apply to offerings made pursuant to Form 1–E, Notification under Regulation E? [81] We received no public comment arguing against including Regulation E in Rule 105's purview, or articulating why offerings under Regulation E should not be subject to Rule 105.

In light of the important investor protections that Rule 105 provides, we have determined that it is prudent that offerings under Regulation A and Regulation E should be treated identically under Rule 105. We are concerned that short selling of securities issued pursuant to Regulation E during a Rule 105 restricted period raises the same manipulative concerns to which Rule 105 is directed, and which are present with offerings made pursuant to Regulation A. Subjecting offerings made pursuant to Regulation E to the provisions of Rule 105 is designed to ensure that participants in the secondary market for the securities of small business investment companies and business development companies will enjoy the same protections afforded to participants in the secondary market for the securities of similarly placed non-investment companies. Including offerings made pursuant to Form 1–E will place small business investment companies and business development companies on an equal footing with small issuers that utilize Regulation A. Consequently, we have amended Rule 105 to encompass offerings made on Form 1–E.

We have also amended the language of Rule 105(a) to include the term ''subject security'' and harmonize it with language used in other Regulation M rules. The amended rule states that it is unlawful for any person to sell short the security that is the ''subject'' of the offering and purchase offered securities. The term ''subject'' security is included in Regulation M Rule 100's definition of covered security.[82] Rule 100 defines a covered security as ''any security that is the subject of the distribution, or any reference security.'' [83] While amended and former Rule 105 apply to offerings of securities rather than to distributions, the ''subject'' security language is consistent with Regulation M and, in response to commenters concerns, clarifies that the amended rule does not apply to reference securities. Therefore, in an offering of securities convertible into common equity, even though the convertible securities are themselves equity securities,[84] a person may still sell short the underlying common equity and purchase the convertible security in the offering without violating Rule 105.[85] Convertible offerings appear to be priced on many factors in addition to the underlying equity's price, such as credit rating, which may make convertible offerings less susceptible to manipulation through pre-pricing short sales. However, the Commission will continue to monitor the convertible offering market and may re-evaluate these offerings.

In response to commenters' concerns, amended paragraph (a) retains the language of the former rule that the purchase of the offered security is made ''from an underwriter or broker or dealer participating in the offering.'' Although we stated in the Proposing Release that the language ''from an underwriter or broker or dealer participating in the offering'' was unnecessary because Rule 105 covers shelf offerings now, three of the commenters stated their belief that retaining this language is necessary in order not to extend the scope of the rule to unnecessarily preclude a broker or dealer from participating in an offering as a distribution participant, and purchasing the offering securities from the issuer as part of the distribution process, in situations where a unit within the same broker-dealer firm may have effected a Rule 105 restricted period short sale.[86] Thus, a broker or dealer is not precluded from participating in an offering as a distribution participant and may purchase the offering securities from an issuer as part of the distribution process if a unit within the same firm effected a short sale(s) during the Rule 105 restricted period.

Amended paragraph (a) also retains the ''purchase'' language of the former rule. The Proposing Release used the language ''purchase, including enter into a contract of sale for, the security in the offering.'' We have determined that it is not necessary to include the additional language regarding ''enter into a contract of sale'' because a purchase or sale under the Securities Act includes any contract of sale.[87] Thus, for purposes of amended Rule105, the purchase occurs at the time the investor becomes committed by agreement or is commitment to buy the

[76] *See, e.g.*, Cleary, SIFMA, MFA letters.

[77] *See e.g, SEC* v. *Galleon Management, L.P, Civil Action No. 1: 05CV1006 (RMU) (May 19, 2005)* in which Galleon participated in an August 2003 offering of Centene Corp. The Form 10–K for Centene Corp., for the fiscal year ended December 31, 2003, reported a $404,751,936 aggregate market value of the voting and non-voting common equity held by non-affiliates which exceeds the $150 million public float threshold in Regulation M's actively-traded securities exception.

[78] 17 CFR 230.601–610a (2007).

[79] *See Amendments to the Offering Exemption Under Regulation E of the Securities Act of 1933*, Securities Act Release No. 6526 (Apr. 25, 1984). Although we subsequently amended Regulation A to change its requirements, those amendments do not affect the trading activities that are subject to Rule 105.

[80] *See, e.g., Short Sales in Connection with a Public Offering*, Securities Exchange Act Release No. 26028 (Aug. 25, 1988) (subjecting offerings made pursuant to an offering under Regulation A to the provisions of Rule 10b–21(T), a predecessor rule to Rule 105).

[81] 71 FR at 75007.

[82] 17 CFR 242.100.

[83] 17 CFR 242.100.

[84] Any security convertible into an equity security is, likewise, an equity security. *See* Exchange Act Rule 3a11–1.

[85] While, for purposes of Regulation M, the underlying common equity is not the subject of the convertible securities distribution, sellers should be aware that the registration provisions of the Securities Act of 1933 may still apply to both the convertible security and the underlying equity security at the time of the offering.

[86] *See* SIFMA, Davis, MFA letters.

[87] *See, e.g., Securities Offering Reform*, Release No. 33–8591, 70 FR 44722, 44765 and at note 391 (''Securities Offering Reform''). *See also* MFA Letter (commenting on the ''contract of sale'' language).

offered security, whether such agreement is oral or written.[88]

The amendments to Rule 105 are targeted and narrow, and thus do not restrict short sales beyond what the Commission believes is necessary to address recent non-compliance and strategies to conceal the prohibited covering of the former rule. While some commenters suggested shortening the rule's restricted period to incorporate the concept of public announcement of an offering,[89] we believe that there is a risk that an investor could learn about a potential shelf offering before it is publicly announced and would still be permitted to sell short even with the knowledge of an upcoming offering.[90] In addition, the amendments will help promote the process of capital formation. Moreover, in response to commenters, the absolute ban on purchasing offered securities in the Proposing Release has been refined to address many of the commenters' concerns, while still advancing the goals of the Rule.

The amended rule does not ban short sales. Traders can sell short during a Rule 105 restricted period if they choose not to purchase offered securities. Traders can sell short prior to the restricted period and receive an offering allocation. Compliance with the bona fide purchase provision also allows traders to sell short during the Rule 105 restricted period and receive an allocation. The bona fide purchase provision is designed to promote capital formation while the conditions for the provision are designed to reduce artificial influences on pricing. As such, the bona fide purchase provision advances the Commission's investor and market protection goals. At the same time, the provision addresses commenters' concerns regarding not having to make investment decisions before the offering price is determined, allowing issuers and underwriters to price offerings with ''market counterbalance,'' and not reducing the number of buyers for certain offerings.[91] Additionally, while several commenters suggested that a better approach for the Commission would be to simply provide additional interpretive guidance to the investment community as to what constitutes ''covering'' for purposes of former Rule 105, we believe that the amendments provide a bright line demarcation of prohibited activity that is consistent with the prophylactic nature of Regulation M and that will likely better deter non-compliance with Rule 105. Thus, the amendments provide additional guidance to the investment community in terms of compliance with Rule 105, but while still addressing potentially manipulative activity in a manner that may more effectively bolster issuer and investor confidence in the offering process and thus encourage capital formation.

III. Derivatives

In the Proposing Release, we stated our understanding that persons may use options or other derivatives in ways that may cause the harm that Rule 105 is designed to prevent and requested comment on trading strategies involving derivatives that may depress market prices and result in lower offering prices to issuers in ways not covered by then current Rule 105 or the proposal.[92] The Commission requested specific detail about particular derivatives used, transactions, and the role of the parties involved in the transactions. Commenters did address the issue of derivatives but only to a limited extent.[93] For example, one commenter requested that the Commission specifically prohibit short sales of, and equivalent transactions in, derivative securities from Rule 105.[94] This commenter noted that Commission guidance about the applicability of the general anti-manipulation rules has not been effective in preventing short sellers intent on manipulating an issuer's securities from using various synthetic shorts, married puts and sham transactions to accomplish indirectly what Rule 105 prohibits directly.[95] Similarly, another commenter also noted that derivatives strategies, including married puts and sham swap transactions, have been utilized to avoid the prohibitions of Rule 105 and that new creative strategies that involve other derivatives which fall outside these parameters are likely in the future.[96] One commenter stated its belief that applying Rule 105 to transactions in derivatives ''would be another significant departure from the Commission's philosophy underlying Regulation M and the covering of derivatives in its prophylactic rules.[97] Another commenter stated its belief that ''derivatives'' is a term that is both too broad and too vague to properly be addressed as one all encompassing entity under a rule.[98]

In view of above-referenced comments, the Commission will continue to monitor the use of derivative strategies that may replicate the economic effect of the activity that Rule 105 is designed to prevent. Among the issues we will monitor and evaluate further is whether the link between the derivatives trading and the underlying equities is sufficiently attenuated as not to warrant additional regulation. In addition, we will consider the extent to which derivative strategies are a functional substitute for the equity trading covered by the rule. We also note that any transaction or series of transactions remain subject to the anti-fraud and anti-manipulation provisions of the securities laws even if they do not implicate Rule 105.

IV. Paperwork Reduction Act

There is no collection of information requirement within the meaning of the Paperwork Reduction Act for Rule 105.

V. Cost-Benefit Analysis

We are sensitive to the costs and benefits of Rule 105 and we have considered the costs and benefits of the adopting amendments. To assist us in evaluating the costs and benefits, in the Proposing Release, we encouraged commenters to discuss any costs or benefits associated with the proposal. Commenters were requested to provide analysis and data to support their views on the costs and benefits associated with the proposal. Commenters were encouraged to discuss any additional

[88] *See Securities Offering Reform* at n.391 (referring to Securities Act Section 2(a)(3) and noting, in relevant part, that, ''Courts have held consistently that the date of a sale is the date of contractual commitment, not the date that a confirmation is sent or received or payment is made. *See, e.g., Radiation Dynamics, Inc.* v. *Goldmuntz*, 464 F.2d 876, 891 (2d Cir. 1972) (holding that a purchase occurs at ''the time when the parties to the transaction are committed to one another''); *In re Alliance Pharmaceutical Corp.*, Secs. Lit., 279 F. Supp. 2d 171, 186–187 (S.D.N.Y. 2003) (following the holding in Radiation Dynamics with respect to the timing of a contract of sale); *Pahmer* v. *Greenberg*, 926 F. Supp. 287 (citing *Finkel* v. *Stratton Corp.*, 962 F.2d 169, 173 (2d Cir. 1992) (''[A] sale occurs for Section 12[(a)](2) purposes when the parties obligate themselves to perform what they have agreed to perform even if the formal performance of their agreement is to be after a lapse of time'')); *Adams* v. *Cavanaugh Communities Corp.*, 847 F. Supp. 1390, 1402 (N.D. Ill. 1994) (noting that the Seventh Circuit has followed the Radiation Dynamics decision).''

[89] *See, e.g.*, Davis, SIFMA, Fairfax letters, supra note 29.

[90] *See* Sullivan letter.

[91] *See, e.g.*, Morgan letter.

[92] Proposing Release, 71 FR at 75005.

[93] *See, e.g.*, Fairfax letter.

[94] *Id.*

[95] *Id.*

[96] NYSE letter.

[97] MFA letter.

[98] Morgan letter (noting also that the Commission had previously seen the linkages between prices in these markets and the primary market as too attenuated to be a direct influence and too attenuated to permit effective manipulation of the primary market and that, because of the large number of different types of derivatives and the attenuated price relationship among the derivatives and the underlying stock, a blanket application to derivatives would result in unnecessary and complicated regulation).

costs or benefits or reductions in costs in addition to those discussed in the Proposing Release. The Commission requested comment on potential costs for modification to any computer systems and any surveillance mechanisms as well as any potential benefits resulting from the proposal for issuers, investors, broker or dealers, other securities industry professional, regulators, or other market participants. No comment letters provided estimates of specific costs.

A. Adopted Amendments to Rule 105 of Regulation M

In general, former Rule 105 prohibited persons who sold short prior to pricing certain offerings during a defined restricted period from covering such short sales with offering securities. The prohibited activity was the covering. Under the amendments, the prohibited activity is now purchasing in the offering. As amended, Rule 105 of Regulation M makes it unlawful in connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1–A (§ 239.90) or Form 1–E (§ 239.200) filed under the Securities Act (''offered securities''), for any person to sell short the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period that is the shorter of the period beginning five business days before the pricing of the offered securities and ending with such pricing or beginning with the initial filing of such registration statement or notification on Form 1–A or Form 1–E and ending with the pricing. The amendments provide, however, that it shall not be unlawful for such person to purchase the offered securities if such person makes a bona fide purchase(s) of the security that is the subject of the offering that is at least equivalent in quantity to the entire amount of the Rule 105 restricted period short sale(s). The purchase must be effected during regular trading hours, reported to an effective transaction reporting plan, and effected after the last Rule 105 restricted period short sale, prior to pricing and no later than the business day prior to the day of pricing. In order to rely on the bona fide purchase provision, a person may not effect a short sale, which is reported to an effective transaction reporting plan, within the 30 minutes prior to the close of regular trading hours on the business day prior to the day of pricing.

In addition, the amendments provide exceptions for separate accounts and investment companies. Accordingly, the purchase of the offered security in an account of a person shall not be prohibited where such person sold short during the Rule 105 restricted period in a separate account, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between accounts. Further, the amendments include an exception for investment companies registered under Section 8 of the Investment Company Act that allow such an investment company to participate in an offering if an affiliated investment company or any series of such company sold short during the restricted period.

The goal of Rule 105 is to promote offering prices that are based upon market prices determined by supply and demand rather than artificial forces. The rule is prophylactic and prohibits the conduct irrespective of the short seller's intent. The amended rule eliminates the covering requirement of the former rule because there had been non-compliance with the former rule coupled with persons effecting strategies to hide the prohibited covering.

B. Benefits

The amendments are intended to end the proliferation of strategies designed to hide covering restricted period short sales with offered securities. The amendments seek to fulfill this objective by eliminating the covering requirement. Putting an end to activity designed to conceal covering with offered securities but replicate the same economic outcome is expected to better deter those attempting to place artificial downward pressure on market prices, which can lower offering prices and thereby reduce an issuer's offering proceeds. The amendments are expected to benefit issuers because they likely will receive offering proceeds that are not lower than anticipated due to short sales prior to pricing by persons who would cover such short sales with offering securities and then attempt to conceal the prohibited covering. Academic research shows that prices decline by 1–3% on average during the five days before pricing for follow-on offerings under the current restrictions.[99] In its comment letter, Fairfax Financial indicated that the academic literature underestimates the effect of short selling during the Rule 105 restricted period and provided an example of an offering with a larger price decline. No commenters provided arguments suggesting that this price decline is due to factors other than noncompliance with former Rule 105.

The amendments will work to safeguard the integrity of the capital raising process by promoting offering prices based on the independent forces of supply and demand rather than artificial prices due to potentially manipulative short sales prior to pricing. This may boost investor confidence that investment decisions can be based on market prices and offering prices that are unencumbered by artificial forces, and thus may facilitate capital formation.

Prohibiting purchasing in the offering when one has sold short during the restricted period provides a bright line demarcation of prohibited activity consistent with the prophylactic nature of Regulation M. The amended rule likely will better deter non-compliance with Rule 105 because it may be more difficult to conceal an offering purchase than to conceal covering. The amendments also benefit traders who want to comply with Regulation M by providing a bright line delineation of unlawful conduct. This bright line demarcation of prohibited conduct is also a benefit to regulators surveilling for and investigating potential Rule 105 violations.

The amendments clarify the pool of securities offerings to which Rule 105 applies. Application of the rule is limited to offerings of ''equity'' securities. This precise language benefits persons determining whether or not the rule is applicable in a particular situation. The amended rule also harmonizes its language with other rules of Regulation M by using the term ''subject'' security. The amendments also benefit traders by making it clear that the rule does not apply to reference securities so that, in a convertible offering, a trader can sell short the underlying common equity and purchase the convertible security in the offering without violating Rule 105.

The new provisions concerning bona fide purchases, separate accounts, and investment companies benefit issuers because they narrowly tailor the rule to address a specific abuse in a manner consistent with the goals of Rule 105 without unnecessarily shrinking the potential universe of offering investors. The bona fide purchase provision also benefits issuers because it requires that the bona fide purchase must occur no

[99] *See, e.g.,* Shane A. Corwin, The Determinants of Underpricing for Seasoned Equity Offers, 58 J. Fin 2249 (Oct. 2003). Although the study does not purport to explain why this happened, it is worth noting that the study found that prices did in fact decline during the five day restricted period prior to the pricing of the offering. Various reasons for this price decline have been posited in the literature of which short selling is only one possible explanation.

later than the business day prior to the day of pricing. This benefits issuers because it provides an opportunity for market reaction to the purchase prior to pricing the offering.

The bona fide purchase provision also benefits short sellers because they are able to effect certain short sales without being precluded from making an offering purchase where we believe the price impact of the purchase offsets the price impact of the short sales. The separate account exception benefits short sellers who will not have to restrict their short sales because of the possibility of a separate but related account purchasing offered securities. Similarly, the investment company exception benefits investment companies who sell short because they will not have to restrict their short sales do to the possibility of an affiliated investment company or any series of such company purchasing offered securities. The separate account and investment company provisions also benefit potential investors who may want to purchase offered securities. These potential investors will not be precluded from doing so because of restricted period short sales in a separate account or affiliated investment company.

The amendments do not ban short sales. Rather, the amendments maintain much of the prior rule's flexibility for effecting short sales such as allowing traders to sell short prior to the restricted period and receive an allocation, and to sell short during the restricted period if they do not participate in an offering. Persons can also sell short during the restricted period and participate in the offering if they make a bona fide purchase. The amendments benefit the securities market generally because they allow for short sales that may contribute to pricing efficiency and price discovery.

The amendments also benefit issuers by expanding the rule's scope to cover offerings made pursuant to Form 1–E. Issuers making such offerings should be less likely to receive reduced offering proceeds due to short sales effected immediately before pricing an offering. Subjecting offerings made pursuant to Regulation E to the provisions of Rule 105 will help to ensure that participants in the secondary market for the securities of small business investment companies and business development companies will enjoy the same protections afforded to participants in the secondary market for the securities of similarly placed non-investment companies. Similarly, including offerings made pursuant to Form 1–E will place small business investment companies and business development companies on an equal footing with small issuers that utilize Regulation A.

By putting an end to activity designed to conceal covering with offered securities but in a manner designed to replicate the same economic outcome, the amendments are expected to lead to a reduction in short sales in violation of Rule 105 that place artificial downward pressure on market prices, which can lower offering prices and thereby reduce an issuer's offering proceeds. Therefore, the amendments will likely strengthen the ability of underwriters to set offering prices based on independent supply and demand without being encumbered by artificial activity in the market.

C. Costs

We recognize that the amendments to Rule 105 may result in some costs to certain market participants. Under the former rule, persons that effected restricted period short sales were prohibited from covering such short sales with offering securities. Thus, persons were required to have systems and surveillance mechanisms for information gathering, management and recordkeeping systems or procedures in order to comply with the former rule. For that reason, persons are not expected to incur costs for having to develop new surveillance mechanisms. Any existing mechanisms may need to be modified but we do not anticipate that any costs associated with such modification will be significant. We note, however, that one commenter stated that in order to comply with the proposed amendments, a large trading organization would need to implement significant changes to its trading infrastructure to identify and track offerings subject to Rule 105. However, while there are some differences in what persons will have to track under the amended Rule, including potential added costs associated with the bona fide purchase provision, persons needed to identify and track offerings subject to the former rule, and thus, such costs were likely already incurred when the rule was first adopted and, therefore, any additional costs are likely to be minimal.

The adopting amendments provide that a person who sells short during the restricted period cannot purchase in the offering. We believe that this bright line demarcation of prohibited conduct may perhaps even be easier to surveil and comply with, and which may lead to reduced costs. Further, we believe that this bright line demarcation of prohibited conduct may also lead to a reduction in costs given the anticipated reduction in schemes that may currently be in place to conceal covering.

We anticipate that some entities may incur costs associated with educating traders regarding the adopted amendments and updating compliance manuals. We do not anticipate that such costs will be significant.

We do not anticipate that registered investment companies will incur significant costs associated with the amendments. Many registered investment companies do not effect short sale strategies. In addition, the separate account exception may used by sub-advisers to the same investment company. If the sub-advisers' accounts are separate, one sub-adviser can purchase the offered securities if another sub-adviser sold short during the Rule 105 restricted period. Further, the investment company exception can be used by an individual fund within the same complex or a series of a fund so that one fund or series can purchase an offered security if another fund within the same complex or a different series of the fund sold short during the Rule 105 restricted period. Accordingly, sub-advisers and investment companies relying on these exceptions will not incur costs from altering their trading.

There may be some costs to short sellers relying on the bona fide purchase provision as they will need to make a market purchase in order to participate in the offering. Moreover, under the amendments, restricted period short sellers relying on the bona fide purchase provision must make a purchase prior to pricing, but the purchase must occur no later than the business day prior to the day of pricing. In rare circumstances, there also may be costs to a person who sells short near the 30 minutes prior to close of regular trading hours on the business day prior to the day of pricing and is then approached to participate in an offering. That person may incur some costs in making the market purchase in order to participate in the offering as well as some costs in determining the exact time of the short sale. We expect any such cost will be minimal.

We anticipate that many persons will be able to rely on the separate account exception based on their current structures. For example, the exception would be available to an individual investor who invests capital in two or more accounts, grants full discretionary trading to the respective managers of each account, does not coordinate trading between the accounts or make investment decisions for the accounts and has managers that do not coordinate trading. We expect that many individual investors with multiple accounts currently have such a structure in place

and would not incur costs to comply with this exception. By way of another example, a pension fund that provides capital to two or more advisers may currently fall within the exception and would not incur costs in order to comply with the separate account exception.

We do not anticipate significant costs to be incurred by persons relying on the investment company exception. This exception allows certain investment companies to participate in an offering if an affiliated investment company or any series of such company sold short during the restricted period. We expect that the investment companies at which the exception is directed currently have structures in place that will allow them to take advantage of the exception and thus should not incur significant costs, if any, in relying on the exception.

There may be persons who are unable to rely on the investment company or separate account exceptions. We note that such persons are not required to use the exceptions and thus there is no cost associated with the exception that a person would incur. Rather than rely on these exceptions, such persons may instead choose not to purchase an offered security, refrain from selling short during the restricted period if they choose to purchase the offered security, or use the bona fide purchase exception. A person may however, choose to voluntarily adjust their structures so as to be able to use the investment company or separate account exceptions and may incur costs in doing so.

There may be costs to a person that is unable to rely on the new exceptions and chooses to seek to obtain exemptive relief from the Commission. However, we anticipate the three new exceptions will be used by many persons and accordingly should reduce the need for exemptive relief. Therefore, we do not anticipate numerous requests for exemptive relief. In addition, persons can tailor their trading so as to not run afoul of the rule and eliminate the need for exemptive relief.

In response to the Proposing Release, one commenter noted potential costs associated with the possibility of the proposals impairing trading strategies of hedge funds and other active traders, with likely negative consequences for capital raising.[100] Another commenter noted that the proposals will have an adverse impact on capital raising through secondary offerings and impose greater costs to issuers by: forcing investors to make an investment decision at an earlier point in time before an offering price is determined; allowing issuers and underwriters to price offerings without market counterbalance; and reducing the number of buyers for secondary offerings.[101] However, we believe that modifying the proposal to include the bona fide purchase provision will address commenters' concerns about the potential negative consequences or impact on capital raising, including concerns about a decrease in the number of potential buyers in an offering and increased costs to issuers. The provision also allows potential buyers to decide to invest at a time much closer to the pricing of an offering than as originally proposed.

We do not expect the amendments to result in a major increase in costs. We expect that the amendments likely will curtail the potential for manipulative activity that can reduce offering proceeds. The change will provide a protective measure against abusive conduct that hampers the capital raising process and negatively impacts issuers. We believe that any costs associated with the amendments are justified by the benefits derived from preventing the manipulative activity of effecting restricted period short sales and covering with offering shares.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [102] requires us, when engaging in rulemaking and where we are required to consider or determine where an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [103] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Proposing Release, we solicited comment on the proposal's effects on efficiency, competition, and capital formation. Additionally, we requested comment on the potential impact of the proposed amendments on the economy on an annual basis pursuant to the Small Business Regulatory Enforcement Act of 1966 (''SBREFA'').[104]

In response to the Proposing Release, one commenter stated its belief that the proposed amendments could result in unintended negative consequences, including the creation of new hurdles that hinder the efficiency of the capital formation process—to the ultimate detriment of the issuers the Rule is seeking to protect.[105] This commenter also expressed concern about the impact of the proposed amendments in situations where investors effect short sales during the rule's restricted period without any knowledge that the offering is going to occur; and that by effectively precluding a group of investors from receiving an allocation, the proposed amendments could negatively impact underwriters' decision on whether to commit to some offerings.[106] We believe that the bona fide purchase provision addresses these concerns, in that most of these investors will not be precluded from participating in such offerings.

We believe that the amendments are expected to promote capital formation through enhanced investor confidence in the integrity of the U.S. securities market because the amendments prohibit conduct that can manipulate market prices and could result in lower offering prices.[107] Capital formation may also be facilitated because issuers may be more likely to offer securities for sale in the U.S. securities market because there are rules in place to deter potentially manipulative conduct that effects offering prices. The bona fide purchase provision will likely contribute to capital formation by helping to ensure that the universe of potential offering investors is not unduly limited.

The amendments also promote pricing efficiency. Short sales contributing to price discovery and efficiency can occur at any time under Rule 105 if a person chooses not to purchase in an offering. Persons can sell short prior to the restricted period and purchase offering securities. In addition, the bona fide purchase provision retains an opportunity for persons to sell short during the Rule 105 restricted period and still participate in certain offerings. The amendments are expected to lessen the incentive to engage in trading activity that could lead to a loss in pricing efficiency prior to when an offering is priced because it is now more

[100] *See* MFA letter.

[101] *See* Morgan letter.

[102] 15 U.S.C. 78c(f).

[103] 15 U.S.C. 78w(a)(2).

[104] Pub. L. 104–121, tit. II, 110 Stat. 857 (1996).

[105] *See* SIFMA letter.

[106] *See id.*

[107] Academic research shows that prices decline during the five days before pricing for follow-on offerings under the current restrictions. *See supra* note 99. *See also* Fairfax letter.

difficult to obscure the prohibited activity of making an offering purchase.

The amendments are not expected to impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. An individual fund within a fund complex, or a series of a fund, may rely on the investment company exception if the conditions of the exception are met. A separately subadvised portion of a fund may rely on the separate account exception if the conditions of the exception are satisfied. Because of the broad diversity of other fund structures, we will consider individual requests on a case-by-case basis.

The Commission believes that the amendments are in the public interest because of the strategies designed to hide the covering prohibited by former Rule 105 and the resulting artificial downward pressure placed on market prices, which can lower offering prices and thereby reduce an issuer's offering proceeds.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the Regulatory Flexibility Act in conjunction with the Proposing Release. The Proposing Release included, and solicited comment on, the IRFA.

A. Need for the Amendments

There has been non-compliance with former Rule 105 and persons engaging in strategies to hide that non-compliance. In particular, persons engineered strategies to conceal the prohibited covering. We have observed that these strategies evolved over time. The Commission is adopting these amendments to forestall the continuation of these obfuscating transactions and protect the integrity of the U.S. capital raising process. We believe the amendments are necessary to cut-off the likely future development of more complex attempts to disguise violations of the Rule.

B. Objectives of the Amendments

The amendments are designed to facilitate offering prices determined by independent market forces. The amendments enhance market integrity by prohibiting conduct that can be manipulative around the time an offering is priced so that market prices can be fairly determined by an independent market. The amendments are designed to promote offering prices that are determined by the natural forces of supply and demand. We believe the amendments safeguard the integrity of the capital raising process and protect issuers from potentially manipulative activity that can reduce offering proceeds. The amendments are expected to promote investor confidence in the market which should foster capital formation.

C. Significant Issues Raised by Public Comments

The IRFA appeared in the Proposing Release.[108] We requested comment on the IRFA on ''(1) the number of persons that are subject to Rule 105 and the number of such persons that are small entities; (2) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact * * * and (3) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments.'' [109] We received one comment letter that discussed the IRFA.[110]

D. Small Entities Subject to the Rule

The amendments apply to persons that effect short sales during the restricted period. For purposes of amended Rule 105, the term ''person'' is unchanged from the former rule. The persons covered by the amendments include small entities. Generally, these entities were already subject to former Rule 105 and were likely to have been monitoring restricted period short sales. For that reason, we do not anticipate that there will be any significant additional costs associated with compliance with the amendments for these businesses. Although it is impossible to quantify every type of small entity that may sell short during a Rule 105 restricted period, paragraph (c)(1) of Rule 0–10 [111] states that the term ''small business'' or ''small organization'' when referring to a broker-dealer means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of the start of 2006, the Commission estimates that there were approximately 911 broker dealers that qualified as small entities as defined above.[112]

Any business, however, regardless of industry, will be subject to Rule 105 if they sell short during the applicable restricted period. The Commission believes that, except for the broker-dealers discussed above, especially in the absence of commenters addressing the issue, an estimate of the number of small entities that fall under the amendments is not feasible.

As with the former rule, the amended rule does not distinguish offerings by whether an issuer is small or large. Its provisions apply equally to any offering that falls within the rule's conditions regardless of the size of the issuer.

E. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments may impose limited new compliance requirements on any affected party, including broker-dealers that are small entities. Under the amendments, persons covered by the rule who sell short during the restricted period cannot purchase securities in the offering. While compliance is required to ensure the prohibition is not violated, there are no new recordkeeping or reporting obligations.

The amendments do not modify the measurement of restricted periods that apply. Therefore, since the former rule also addresses conduct around short selling that occurs during a Rule 105 restricted period, the monitoring that is required of market participants to ensure compliance with the amended rule will not change.

We note that the compliance with the amended rule is expected to be simpler than compliance with the former rule, which prohibited covering. Monitoring for an offering purchase, notwithstanding any additional monitoring that may be needed to help ensure compliance with the bona fide purchase provision, is simpler than monitoring for covering because it is so easily identifiable. As with the former rule, responsibility for compliance with the amendments rests with the person that sells short during the Rule 105 restricted period. The amendments are focused on eliminating schemes to disguise the covering prohibited by the

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[108] *See* Proposing Release Section X, 71 FR at 75009.

[109] Proposing Release, 71 FR at 75010.

[110] *See* letter from Cleary (disagreeing with the statement that there are no duplicative rules). However, we note that the amendments do not replace, but are designed to work in conjunction with other provisions under the federal securities laws, such as Exchange Act Section 10(b) and Rule 10b–5 and Securities Act Section 5.

[111] 17 CFR 240.0–10(c)(1).

[112] These numbers are based on the Office of Economic Analysis' review of 2006 FOCUS Report filings reflecting registered broker dealers. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

former rule and are not intended to change compliance responsibilities.

There are no new reporting or recordkeeping requirements in the amended rule. The amendments do not contain recordkeeping or reporting requirements for broker-dealers or any recordkeeping or reporting requirements unique to small entities.

F. Agency Action To Minimize Effect on Small Entities

We have considered various alternatives to accomplish our objectives which minimize any significant adverse impact on small entities and other entities. While we proposed a stricter rule, we modified the proposal to include a limited bona fide purchase provision in response to commenters' concerns. We believe that the amendments are narrowly tailored to address particular conduct, hiding the covering prohibited by the former rule. The amendments apply restrictions where they are most needed and ease the proposed amendments, in light of comments, where the risk of potentially manipulative activity is not as great. The amendments are not expected to adversely effect small entities because they do not impose any new recordkeeping, or reporting requirements.

VIII. Statutory Basis and Text of Amendments

Pursuant to sections 7, 17(a), and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77q(a), and 77s(a)]; sections 2, 3, 7(c)(2), 9(a), 10, 11A(c), 12, 13, 14, 15(b), 15(c), 15(g), 17(a), 17(b), 17(h), 23(a), 30A, and 36 of the Exchange Act [15 U.S.C. 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, and 78mm]; and sections 23, 30, 38 of the Investment Company Act [15 U.S.C. 80a–23, 80a–29 and 80a–37].

List of Subjects in 17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II, Part 242 of the Code of Federal Regulations is amended as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITIES FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 2. Section 242.105 is amended by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d); and
■ c. Adding new paragraph (b).

The revision and addition reads as follows:

§ 242.105 Short selling in connection with a public offering.

(a) *Unlawful Activity.* In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1–A (§ 239.90 of this chapter) or Form 1–E (§ 239.200 of this chapter) filed under the Securities Act of 1933 (''offered securities''), it shall be unlawful for any person to sell short (as defined in § 242.200(a)) the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period (''Rule 105 restricted period'') that is the shorter of the period:

(1) Beginning five business days before the pricing of the offered securities and ending with such pricing; or

(2) Beginning with the initial filing of such registration statement or notification on Form 1–A or Form 1–E and ending with the pricing.

(b) *Excepted Activity*—(1) *Bona Fide Purchase.* It shall not be prohibited for such person to purchase the offered securities as provided in paragraph (a) of this section if:

(i) Such person makes a bona fide purchase(s) of the security that is the subject of the offering that is:

(A) At least equivalent in quantity to the entire amount of the Rule 105 restricted period short sale(s);

(B) Effected during regular trading hours;

(C) Reported to an ''effective transaction reporting plan'' (as defined in § 242.600(b)(22)); and

(D) Effected after the last Rule 105 restricted period short sale, and no later than the business day prior to the day of pricing; and

(ii) Such person did not effect a short sale, that is reported to an effective transaction reporting plan, within the 30 minutes prior to the close of regular trading hours (as defined in § 242.600(b)(64)) on the business day prior to the day of pricing.

(2) *Separate Accounts.* Paragraph (a) of this section shall not prohibit the purchase of the offered security in an account of a person where such person sold short during the Rule 105 restricted period in a separate account, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between the accounts.

(3) *Investment Companies.* Paragraph (a) of this section shall not prohibit an investment company (as defined by Section 3 of the Investment Company Act) that is registered under Section 8 of the Investment Company Act, or a series of such company (investment company) from purchasing an offered security where any of the following sold the offered security short during the Rule 105 restricted period:

(i) An affiliated investment company, or any series of such a company; or

(ii) A separate series of the investment company.

* * * * *

Dated: August 6, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–15608 Filed 8–9–07; 8:45 am]

BILLING CODE 8010–01–P



Federal Register

Friday,
August 10, 2007

Part III

Securities and Exchange Commission

17 CFR Parts 239, 240, 249, and 274
Deletion of References to IRS Identification Numbers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 249 and 274

[Release Nos. 33–8830, 34–56205, IC–27923]

Deletion of References to IRS Identification Numbers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are removing a number of references to filers' IRS identification numbers currently found in several disclosure schedules and forms because we do not need that information to process the documents, nor is the information material to investors.

DATES: *Effective Date:* August 10, 2007.

FOR FURTHER INFORMATION CONTACT: James Budge [(202) 551–3115], Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20459–5553.

SUPPLEMENTARY INFORMATION: We are adopting minor, technical amendments to Form 144 [1] under the Securities Act of 1933 (''Securities Act'') [2] and Forms 3, 4 and 5,[3] descriptions of these forms [4] and Schedules 13D, 13G and TO [5] under the Securities Exchange Act of 1934 (''Exchange Act'').[6]

I. The Amendments

IRS Identification Numbers

We are amending several disclosure schedules, forms and form descriptions to delete references to IRS identification numbers.

Schedules 13D, 13G and TO provide that a reporting person that is an entity may, at its option, include its IRS identification number on the cover page.[7] Form 144 requires a reporting person that is an entity to include its IRS identification number in the filing.[8] Although we sought IRS identification numbers in the past to better process filings, we no longer use them. In addition, IRS identification numbers serve no useful purpose to investors in the context of these disclosure documents. The number appears in beneficial ownership reports and Schedule TO only when a non-natural person chooses to include it. In the case of Form 144, only forms filed by non-natural persons include the number. Since the Commission and the public have more reliable means to track who is filing these documents based on information unrelated to IRS identification numbers, we are eliminating references to IRS identification numbers in these schedules and Form 144.[9]

In 2003, we modified Forms 3, 4 and 5 in part to remove provisions allowing reporting persons to provide IRS identification numbers in those filings.[10] However, several references to IRS identification numbers inadvertently were not removed from related form descriptions and instructions. Accordingly, we are amending those descriptions and instructions to remove all references to IRS identification numbers.[11]

II. Paperwork Reduction Act

The amendments will affect three schedules and four forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[12] The titles of the affected information collections are Securities Act Form 144 and Exchange Act Schedules 13D, 13G and TO and Forms 3, 4 and 5.

Form 144 (OMB Control Number 3235–0101) is used by security holders to disclose securities transaction information under Securities Act Rule 144.

Schedules 13D and 13G (both with OMB Control Number 3235–0145) are used by significant security holders to disclose securities ownership and transaction information under Exchange Act Sections 13(d) and 13(g).

Schedule TO (OMB Control Number 3235–0515) is used by bidders to disclose tender offer information under Exchange Act Sections 13(e)(1) and 14(d)(1).

Form 3 (OMB Control Number 3235–0104) is used by insiders to disclose securities ownership information under Exchange Act Section 16(a).

Forms 4 (OMB Control Number 3235–0287) and 5 (OMB Control Number 3235–0362) are used by insiders to disclose securities transaction information under Exchange Act Section 16(a).

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

The removal of the provisions will result in a negligible reduction in filer burden that is too minimal to quantify and does not affect any collection of information in a substantive way. 44 U.S.C. 3507(h)(3) and 5 CFR 1320(g). Consequently, we have not submitted the revisions to the collections of information to the Office of Management and Budget for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

III. Cost-Benefit Analysis

We expect that the amendments will neither significantly benefit investors or filers of beneficial ownership reports and Schedules TO and investors, nor will they impose costs on them, since the inclusion of IRS numbers in those documents now is voluntary. The amendment to remove Form 144's requirement that non-natural reporting persons disclose their IRS identification numbers should slightly benefit those filers by reducing the amount of information they must provide; these amendments should not impose costs on filers or investors.

IV. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [13] requires us, when adopting rules

[1] 17 CFR 239.144.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are referenced in connection with the Investment Company Act of 1940 (''Investment Company Act'') [15 U.S.C. 80a–1 *et seq.*] in 17 CFR 274.202 and 274.203.

[4] 17 CFR 249.103, 249.104 and 249.105, respectively.

[5] 17 CFR 240.13d–101, 240.13d–102 and 240.14d–100, respectively.

[6] 15 U.S.C. 78a *et seq.*

[7] Schedules 13D and 13G are used by significant security holders to disclose securities ownership and transaction information under Exchange Act Sections 13(d) [15 U.S.C. 78m(d)] and 13(g) [15 U.S.C. 78m(g)]. Schedule TO is used by bidders to disclose tender offer information under Exchange Act Sections 13(e)(1) [15 U.S.C. 78m(e)(1)] and 14(d)(1) [15 U.S.C. 78n(d)(1)]. Schedule TO indirectly permits filers that are entities to include an IRS identification number by permitting them to amend a previously filed Schedule 13D to create a combined filing with the Schedule TO.

[8] Form 144 is used by security holders to disclose securities transaction information under Securities Act Rule 144 [17 CFR 230.144].

[9] In Schedules 13D and 13G, references appear in Item 1 of the cover page and its related instruction. In all three schedules references appear under the heading ''Special Instructions for Complying with Schedule * * *.'' In Form 144, we are deleting IRS identification numbers references from Item 2(b) and its related instruction. The remaining Items in Form 144 will be renumbered as needed.

[10] Form 3 is used by an officer, director or principal security holder (collectively, ''insider'') to disclose securities ownership information under Exchange Act Section 16(a) [15 U.S.C. 78p(a)]. Forms 4 and 5 are used by insiders to disclose securities transaction information under Exchange Act Section 16(a). Forms 3, 4 and 5 permitted filers that were entities to include their IRS identification numbers until the forms were amended in 2003. See Release No. 33–8230 (May 7, 2003) [68 FR 25788 (May 13, 2003)].

[11] The forms are described at 17 CFR 249.103, 249.104, 249.105, 274.202 and 274.203. Only the descriptions under 17 CFR Part 249, however, contain references to IRS identification numbers. We are amending these descriptions, as well as the paragraph that precedes the heading ''General Instructions'' in each form.

[12] 44 U.S.C. 3501 *et seq.*

[13] 15 U.S.C. 78w(a)(2).

under the Exchange Act, to consider the impact that any rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act,[14] Section 3(f) of the Exchange Act,[15] and Section 2(c) of the Investment Company Act [16] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The amendments merely remove the voluntary or required inclusion of information that is no longer useful and make conforming technical changes. We believe the amendments will not impose a burden on competition and have no impact on efficiency, competition or capital formation.

V. Certain Findings

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when an agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [17] As we have explained previously, IRS identification numbers do not provide useful information in the context of federal securities law disclosures made in Schedules 13D, 13G and TO and Form 144 filings. They are provided only in certain of those filings, mostly on a voluntary basis. The changes we are adopting today remove the opportunities to provide information that we sought for internal processing purposes, but have found is no longer useful. Therefore, we believe publication for public comment is unnecessary. In addition, the amendments to Forms 3, 4 and 5 and their descriptions to delete references to the filer's IRS identification number are technical changes to conform to a previous rule change and have no practical effect. Accordingly, we find that publishing notice of these amendments is likewise unnecessary.[18]

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[19] Since we find this information to be not useful or necessary, we see no reason to retain the provisions for 30 days after these rule changes are published in the **Federal Register**. We believe filers should be able to have the limited benefits of these changes immediately. Consequently, we find there is good cause for the amendments to take effect immediately upon publication in the **Federal Register**.

VI. Statutory Basis

We are adopting the amendments under the authority in Section 19(a) [20] of the Securities Act, Sections 13,[21] 14,[22] 16 [23] and 23(a) [24] of the Exchange Act, and Sections 30(h) [25] and 38 [26] of the Investment Company Act.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 239, 240, 249 and 274

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, we amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Amend Form 144 (referenced in § 239.144) by:

■ a. Removing Item 2(b) and redesignating Items 2(c) and 2(d) as Items 2(b) and 2(c);

■ b. Removing Instruction 2(b) and redesignating Instructions 2(c) and 2(d) as Instructions (b) and 2(c).

Note: The text of Form 144 does not and this amendment will not appear in the Code of Federal Regulations.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 240.13d–101 by:

■ a. Revising Item 1 on the Cover Page;

■ b. Revising Item 1 of the Instructions for Cover Page; and

■ c. Revising the Special Instructions for Complying with Schedule 13D, to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

Securities and Exchange Commission, Washington, DC 20549

Schedule 13D

* * * * *

(1) Names of reporting persons.

* * * * *

Instructions for Cover Page

(1) *Names of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—*i.e.*, each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

* * * * *

Special Instructions for Complying With Schedule 13D

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

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[14] 15 U.S.C. 77b(b).

[15] 15 U.S.C. 78c(f).

[16] 15 U.S.C. 80a–2(c).

[17] 5 U.S.C. 553(b)(3)(B).

[18] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or a report to Congress under the Small Business Regulatory Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of a Regulatory Flexibility Act analysis, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[19] *See* 5 U.S.C. 553(d)(3).

[20] 15 U.S.C. 77s(a).

[21] 15 U.S.C. 78m.

[22] 15 U.S.C. 78n.

[23] 15 U.S.C. 78p.

[24] 15 U.S.C. 78w(a).

[25] 15 U.S.C. 80a–29(h).

[26] 15 U.S.C. 80a–37.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules promulgated thereunder.

* * * * *

■ 5. Amend § 240.13d–102 by:

■ a. Revising Item 1 on the Cover Page;

■ b. Revising Item 1 of the Instructions for Cover Page; and

■ c. Revising the Special Instructions for Complying with Schedule 13G, to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d–2.

Securities and Exchange Commission, Washington, DC 20549

Schedule 13G

* * * * *

(1) Names of reporting persons.

* * * * *

Instructions for Cover Page

(1) *Names of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—*i.e.*, each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

* * * * *

Special Instructions for Complying With Schedule 13G

Under Sections 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

* * * * *

■ 6. Amend § 240.14d–100 by revising the Special Instructions for Complying with Schedule TO to read as follows:

§ 240.14d–100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission, Washington, DC 20549

Schedule TO

* * * * *

Special Instructions for Complying With Schedule TO

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information required by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 249.103 [Amended]

■ 8. Amend § 249.103 by:

■ a. Removing from the second sentence the phrase ''sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a) and 79t(a));''

■ b. Removing from the third sentence the phrase '', except for disclosure of I.R.S. identification number by entities, which is voluntary''; and

■ c. Removing the fourth sentence.

§ 249.104 [Amended]

■ 9. Amend § 249.104 by:

■ a. Removing from the second sentence the phrase ''sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a) and 79t(a));''

■ b. Removing from the third sentence the phrase '', except for disclosure of I.R.S. identification number by entities, which is voluntary''; and

■ c. Removing the fourth sentence.

§ 249.105 [Amended]

■ 10. Amend § 249.105 by:

■ a. Removing from the second sentence the phrase ''sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a) and 79t(a));''

■ b. Removing from the third sentence the phrase '', except for disclosure of I.R.S. identification number by entities, which is voluntary''; and

■ c. Removing the fourth sentence.

■ 11. Amend Form 5 (referenced in § 249.105) by:

■ a. Removing the phrase '', Section 17(a) of the Public Utility Holding Company Act of 1935'' from the first paragraph following the heading ''Annual Statement of Changes in Beneficial Ownership of Securities'';

■ b. Removing from the first sentence of the second paragraph of the introductory section preceding the General Instructions the phrase '', except for disclosure of the I.R.S. identification number of the reporting person if such person is an entity, which is voluntary''; and

■ c. Removing the second sentence of the second paragraph of the introductory section preceding the General Instructions.

Note: The text of Form 5 does not and this amendment will not appear in the Code of Federal Regulations.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 12. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 13. Amend Form 3 (referenced in § 249.103 and § 274.202) by:
■ a. Removing the phrase '', Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935'' from the first paragraph following the heading ''Initial Statement of Beneficial Ownership of Securities'';
■ b. Removing from the first sentence of the second paragraph of the introductory section preceding the General Instructions the phrase '', except for disclosure of the I.R.S. identification number of the reporting person if such person is an entity, which is voluntary''; and
■ c. Removing the second sentence of the second paragraph of the introductory section preceding the General Instructions.

Note: The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

■ 14. Amend Form 4 (referenced in § 249.104 and § 274.203) by:
■ a. Removing the phrase '', Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935'' from the first paragraph following the heading ''Statement of Changes in Beneficial Ownership'';
■ b. Removing from the first sentence of the second paragraph of the introductory section preceding the General Instructions the phrase '', except for disclosure of the I.R.S. identification number of the reporting person if such person is an entity, which is voluntary''; and
■ c. Removing the second sentence of the second paragraph of the introductory section preceding the General Instructions.

Note: The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

Dated: August 6, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–15595 Filed 8–9–07; 8:45 am]

BILLING CODE 8010–01–P



Federal Register

Friday,
August 10, 2007

Part IV

Securities and Exchange Commission

17 CFR Parts 200, 230, and 239
Revisions of Limited Offering Exemptions in Regulation D; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, and 239

[Release No. 33–8828; IC–27922; File No. S7–18–07]

RIN 3235–AJ88

Revisions of Limited Offering Exemptions in Regulation D

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules; request for additional comments.

SUMMARY: We propose to revise Regulation D to provide additional flexibility to issuers and to clarify and improve the application of the rules. We propose to create a new exemption from the registration provisions of the Securities Act of 1933 for offers and sales of securities to ''large accredited investors.'' The exemption would permit limited advertising in an exempt offering where each purchaser meets the definition of ''large accredited investor.'' We also propose to revise the term ''accredited investor'' in Regulation D to clarify the definition and reflect developments since its adoption. In addition, we propose to shorten the timing required by the integration safe harbor in Regulation D, and to apply uniform disqualification provisions to all offerings seeking to rely on Regulation D. We are soliciting comments on possible revisions to Rule 504. Finally, we also solicit additional comments on the definition of ''accredited natural person'' for certain pooled investment vehicles in Securities Act Rules 216 and 509 that we proposed in December 2006.

DATES: Comments should be received on or before October 9, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–18–07 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Gerald J. Laporte, Office Chief, or Anthony G. Barone, Special Counsel, Office of Small Business Policy, at (202) 551–3460, or Steven G. Hearne, Special Counsel, Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance, or, in connection with the proposed definition of accredited natural person, Elizabeth G. Osterman, Assistant Chief Counsel, Division of Investment Management, at (202) 551–6825, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Rule 30–1,[1] Rule 144A,[2] Rule 146,[3] Rule 215,[4] and Form D,[5] and revise Regulation D[6] under the Securities Act of 1933[7] by amending Rules 501,[8] 502,[9] 503,[10] 504,[11] 505,[12] 506[13] and 508,[14] and replacing Rule 507.[15] We also request further comment on proposed new Rules 216 and 509 under the Securities Act.[16]

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I. Background and Overview of Proposals

Regulation D, adopted in 1982, was designed to facilitate capital formation while protecting investors by simplifying and clarifying existing exemptions for private or limited offerings, expanding their availability, and providing more uniformity between federal and state exemptions.[17] Although Regulation D originated as an effort to assist small business capital formation and continues to play an important role in that arena, all sizes of companies use the registration exemptions in Regulation D.

Regulation D consists of eight rules. Rules 501 through 503 contain definitions, conditions, and other provisions that apply generally throughout Regulation D. Rules 504 through 506 detail specific exemptions from registration under the Securities Act. Rules 504 and 505 provide

[1] 17 CFR 200.30–1.
[2] 17 CFR 230.144A.
[3] 17 CFR 230.146.
[4] 17 CFR 230.215.
[5] 17 CFR 239.500.
[6] 17 CFR 230.501 through 230.508.
[7] 15 U.S.C. 77a *et seq.*
[8] 17 CFR 230.501.
[9] 17 CFR 230.502.
[10] 17 CFR 230.503.
[11] 17 CFR 230.504.
[12] 17 CFR 230.505.
[13] 17 CFR 230.506.
[14] 17 CFR 230.508.
[15] 17 CFR 230.507.
[16] See Release No. 33–8766 (Dec. 27, 2006) [72 FR 399] (the ''Private Pooled Investment Vehicle Release'').
[17] See Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251].

exemptions adopted pursuant to the Commission's authority under Section 3(b) [18] of the Securities Act. Rule 504 provides exemptions for companies that are not subject to reporting requirements under the Securities Exchange Act of 1934 [19] for the offer and sale of up to $1,000,000 of securities in a 12-month period. Rule 505 exempts offers by companies of up to $5,000,000 of securities in a 12-month period, so long as offers are made without general solicitation or advertising. Rule 506 is a safe harbor under Section 4(2) [20] of the Securities Act and provides an exemption without any limit on the offering amount, so long as offers are made without general solicitation or advertising and sales are made only to ''accredited investors'' and a limited number of non-accredited investors who satisfy an investment sophistication standard. Rules 507 and 508 were added in 1989.[21] Rule 507 disqualifies issuers from relying on Regulation D, under certain circumstances, for failure to file a Form D notice.[22] Rule 508 provides a safe harbor for certain insignificant deviations from a term, condition, or requirement of Regulation D.

Following our adoption in June 2005 of comprehensive amendments to our rules and forms relating to registered public offerings,[23] we believe it is appropriate to propose revisions to our rules applicable to private and limited offerings. Our objective in this effort is to clarify and modernize our rules to bring them into line with the realities of modern market practice and communications technologies without compromising investor protection.[24] Action in this area also is timely because our Advisory Committee on Smaller Public Companies made a number of recommendations relating to private and limited offerings in its final report dated April 23, 2006.[25] Several of the proposals in this release build on the Advisory Committee's recommendations.

As discussed in detail below, we propose to make changes in the following four principal areas involving Regulation D:

- Creating a new exemption from the registration provisions of the Securities Act for offers and sales to ''large accredited investors'';
- Revising the definition of the term ''accredited investor'' to clarify it and reflect developments since its adoption;
- Shortening the length of time required by the integration safe harbor for Regulation D offerings; and
- Providing uniform disqualification provisions throughout Regulation D.

We propose to create a new exemption to the registration requirements of the Securities Act under our general exemptive authority in Section 28 of that Act.[26] This exemption, set forth in proposed new Rule 507, would be limited to sales of securities to ''large accredited investors,'' and would permit an issuer to publish a limited announcement of the offering. The proposed definition of large accredited investor would be based on the ''accredited investor'' definition, but with higher and somewhat different dollar-amount thresholds. Large accredited investors that participate in these exempt offerings would be considered ''qualified purchasers'' under Section 18(b)(3) of the Securities Act,[27] thereby providing ''covered security'' status and the resulting preemption of certain state securities regulation.

We also propose to update the ''accredited investor'' definition. First, we propose to add an alternative ''investments-owned'' standard for determining accredited investor and large accredited investor status. This standard would include definitions of ''investments'' and ''joint investments'' similar to those we proposed in December 2006 in our initiative to revise Regulation D as it relates to investments by individuals in certain private pooled investment vehicles relying on Rule 506.[28] In addition, we propose a mechanism to adjust the dollar-amount thresholds in the definition of ''accredited investor'' to reflect future inflation. We propose to add categories of entities to the list of permitted accredited investors. We also propose to shorten the time frame for the integration safe harbor for Regulation D offerings from six months to 90 days to help provide flexibility to issuers. Finally, we propose to establish uniform disqualification provisions for all offerings under Regulation D in order to prevent certain issuers from relying on Regulation D exemptions.

In addition to these proposals, we also are soliciting comment on whether Rule 504 of Regulation D, the ''seed capital'' exemption, should be amended so that securities sold pursuant to a state law exemption that permits sales only to accredited investors would be deemed ''restricted securities'' for purposes of Rule 144.[29]

Finally, in last year's Private Pooled Investment Vehicle Release, we solicited comment on two new rules that would establish a new category of accredited investor, ''accredited natural person,'' that individuals would need to satisfy in order to invest in certain private pooled investment vehicles relying on Rule 506.[30] We received approximately 600 comments on that proposal, many of which generally disfavored our proposal, which would raise individual investor thresholds for such investments. We are continuing to consider those comments, and solicit further comment on the proposed definition of accredited natural person made in the Private Pooled Investment Vehicle Release. The Commission may act on the new proposals in this release and the December 2006 proposals at the same time.

II. Proposed Revisions of Regulation D

A. Proposed Rule 507—Exemption for Limited Offers and Sales to Large Accredited Investors

We propose to create a new exemption to the registration requirements of the Securities Act for offers and sales of securities to a new category of investors called ''large accredited investors.'' [31] The exemption would permit limited advertising of

[18] 15 U.S.C. 77c(b).

[19] 15 U.S.C. 78a *et seq.*

[20] 15 U.S.C. 77d(2).

[21] See Release No. 33–6825 (Mar. 14, 1989) [54 FR 11369] (adding 17 CFR 230.507 and 230.508).

[22] Rule 503 requires the filing of a Form D notice with the Commission no later than 15 days after the first sale of securities in an offering under Regulation D.

[23] See Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722].

[24] The American Bar Association recently suggested that revisions in this area would be appropriate, in view of the implementation of the securities offering reform rules for registered offerings. See comment letter in Commission Rulemaking File No. S7–11–07 from American Bar Association (Mar. 22, 2007) (the ''ABA Private Offering Letter''), available at *http://www.sec.gov/comments/s7-11-07/s71107-4.pdf.*

[25] See *Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (April 23, 2006), at 74–81, 92–93, 94–96, 100–101 (the ''Advisory Committee Final Report''), available at *http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf.*

[26] 15 U.S.C. 77z–3. Section 28 states that the Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation issued under this title, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[27] 15 U.S.C. 77r(b)(3).

[28] See Private Pooled Investment Vehicle Release. We are taking the opportunity to request additional comment on that proposal here. See II.B.5 below.

[29] 17 CFR 230.144.

[30] Proposed Rules 216 and 509 under the Securities Act.

[31] We propose to move the current contents of Rule 507 into proposed Rule 502(e) and then include the new exemption in Rule 507.

these offerings.[32] Large accredited investors would consist of the same categories of entities and individuals that qualify for accredited investor status under existing Rule 506, but with significantly higher dollar-amount thresholds for investors subject to such thresholds.[33] Legal entities that are considered accredited investors if their assets exceed $5 million would be required to have $10 million in investments to qualify as large accredited investors. Individuals generally would be required to own $2.5 million in investments or have annual income of $400,000 (or $600,000 with one's spouse) to qualify as large accredited investors, as compared to the current accredited investor standard of $1 million in net worth or annual income of $200,000 (or $300,000 with one's spouse). Legal entities that are not subject to dollar-amount thresholds to qualify as accredited investors, generally government-regulated entities, would not be subject to dollar-amount thresholds to qualify as large accredited investors.

We believe that we may exempt certain offers and sales that may involve limited advertising from the registration requirements of Section 5 of the Securities Act[34] without compromising investor protection, due to the general increased sophistication and financial literacy of investors in today's markets, coupled with the advantages of modern communication technologies. Our proposal is patterned generally after the Model Accredited Investor Exemption adopted by the North American Securities Administrators Association (NASAA) in 1997.[35] Like the Model Accredited Investor Exemption, our proposal does not eliminate the prohibition on general solicitation and general advertising from the conditions of the exemption. Both the Advisory Committee on Smaller Public Companies and the American Bar Association's Committee on Federal Regulation of Securities recommended relaxing the ban on general solicitation for transactions with purchasers who do not need the protection of registration.[36] Our proposal attempts to ease restrictions on limited offerings of securities in a manner that is cognizant of the potential harm of offerings by unscrupulous issuers or promoters who might take advantage of more open solicitation and advertising to lure unsophisticated investors to make investments in exempt offerings that do not provide all the benefits of Securities Act registration. We believe easing the restriction on limited offerings of securities as we have proposed is appropriate, given the additional safeguards we have proposed.

The proposed Rule 507 exemption would share the following characteristics with the Rule 506 exemption:

- It would allow an issuer to sell an unlimited amount of its securities to an unlimited number of investors who meet specified criteria-accredited investors in the case of Rule 506 transactions and large accredited investors in the case of Rule 507 transactions;
- Its availability would focus on purchasers, and not depend on the characteristics of offerees;
- It would place no restrictions on the payment of commissions or similar transaction-related compensation;
- It would be non-exclusive, meaning that the issuer could choose to claim any other available exemption without the benefit of the rule;[37]
- Securities acquired in a transaction under the rule would be subject to the limitations on resale under Rule 502(d)[38] and therefore would be treated as ''restricted securities'' as defined in Securities Act Rule 144(a)(3)(ii);[39]
- The issuer would be required to exercise reasonable care to assure that the purchasers of the securities are not underwriters;[40] and
- The issuer would have an obligation to file a notice of sales in the offering with the Commission on Form D.[41]

In addition, proposed Rule 507 would include the same disqualification provisions as we propose below for other Regulation D exemptions.[42] Currently, Rule 506 has no bad actor disqualification provisions.

Rule 507 would differ from Rule 506 in five ways:

- *Large Accredited Investor Standard.* Rule 507 would be premised on the concept of large accredited investors. Rule 506 would continue to be premised on the concept of accredited investors.
- *Limited Advertising Permitted.* Instead of a total ban on general solicitation and general advertising, as is the case in Rule 506 transactions, issuers in Rule 507 transactions could engage in limited advertising that satisfies the requirements of the rule. All other general solicitation and advertising would be prohibited.
- *No Sales to Persons Who Do Not Qualify as Large Accredited Investors.* Issuers in Rule 507 transactions would not be allowed to sell securities to any investor who does not qualify as a large accredited investor. In Rule 506 transactions, issuers may sell securities to an unlimited number of accredited investors and up to 35 non-accredited investors.[43]
- *Authority for Exemption.* Rule 507 would be adopted as an exemption primarily under the Commission's general exemptive authority under Section 28 of the Securities Act, while Rule 506 was adopted as a safe harbor under Section 4(2) of the Securities Act.
- *Covered Security Status.* Securities sold in accordance with either of these rules would be considered ''covered securities,'' but under different provisions of Section 18 of the Securities Act. Securities sold under Rule 507 would be covered securities because the purchasing large accredited investors would be defined as ''qualified purchasers'' under Section 18(b)(3) of the Securities Act. Securities sold under Rule 506 would continue to be covered securities under Section 18(b)(4)(D) of the Securities Act[44] because Rule 506

[32] The exemption would not, however, be available to offers and sales by pooled investment vehicles relying on Section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). See II.A.4 below.

[33] In II.B below, we propose to make certain changes to other accredited investor qualifications. These changes would apply equally to accredited investors in Rule 505 and 506 transactions and to large accredited investors in Rule 507 transactions.

[34] 15 U.S.C. 77e.

[35] A copy of the Model Accredited Investor Exemption is available on the NASAA Web site at *http://www.nasaa.org/content/Files/Model%5FAccredited%5FInvestor%5FExemption.pdf.*

[36] See Advisory Committee Final Report at 74–81; ABA Private Offering Letter, n. 24 above, at 26.

[37] An issuer engaging in the limited advertising permitted by Rule 507 may not be able to claim the Section 4(2) exemption if the activity has imparted a public character to the offering. See Release No. 33–7943 (Jan. 26, 2001) [66 FR 8881] (text accompanying n. 31), citing Release No. 33–4552 (Nov. 6, 1962) [27 FR 11316] (public advertising incompatible with claim of private offering).

[38] 17 CFR 502(d).

[39] 17 CFR 230.144(a)(3)(ii). In a companion release, we have proposed changes to Rule 144. Release No. 33–8813 (June 22, 2007) [72 FR 36822].

[40] Rule 502(d). The term ''underwriter'' is defined in Section 2(a)(11) of the Securities Act. 15 U.S.C. 77b(a)(11).

[41] In a companion release, we are proposing changes to Form D to simplify and update it, as well as to require electronic filing. Release No. 33–8814 (June 29, 2007) [72 FR 37376].

[42] See II.C.2 below.

[43] If an issuer sells to non-accredited investors in a Rule 506 transaction, the issuer must furnish them with the information specified in Rule 502(b), 17 CFR 230.502(b). The issuer also must assure that the non-accredited investors meet the investor sophistication requirements of Rule 506(b)(2)(ii), 17 CFR 230.506(b)(2)(ii). We are not proposing these kinds of requirements for Rule 507 transactions because issuers could not sell securities to any non-accredited investors in Rule 507-exempt transactions.

[44] 15 U.S.C. 77r(b)(4)(D).

was issued under Section 4(2) of the Securities Act.[45]

We discuss these five areas of difference in the sections immediately below.

1. ''Large Accredited Investor'' Standard

We propose to define a new category of investors, called ''large accredited investors,'' [46] which we would use in Rule 507. The proposed definition of large accredited investor is based on the ''accredited investor'' definition, but with higher and somewhat different dollar-amount thresholds.[47] We have proposed higher thresholds due to what we perceive are increased investor protection risks relating to the limited advertising that would be allowed under Rule 507.[48] The higher thresholds would provide a cushion over the accredited investor standards for determining eligibility for the new exemption. The greater public access to investors that the new exemption would provide warrants increased assurance of the ability of investors in offerings under that exemption to fend for themselves. Further, the higher thresholds may provide such assurance.

We propose that the entities or institutions that currently must have more than $5 million in assets to qualify for accredited investor status under Rule 501(a) would be required to have more than $10 million in investments to qualify as large accredited investors. Individuals, or ''natural persons'' as the rule calls them, would be able to qualify as large accredited investors if they own more than $2.5 million in investments or have had individual annual income of more than $400,000 (or $600,000 with one's spouse) in the last two years and expect to maintain the same income level in the current year.[49] We propose to have alternative investments and income tests for individuals because an investments test without an income test tends to favor investors who have had time to build investment portfolios.

Based on estimates from our Office of Economic Analysis, 1.64 percent of U.S. households would qualify as large accredited investors, compared with 8.47 percent that would qualify as accredited investors.[50] Our approach in selecting the dollar-amount thresholds for investors to qualify as large accredited investors reflects an attempt to approximate the standards adopted by the Commission in the 1980s for accredited investors in light of current knowledge and changed circumstances.[51]

We selected the $10 million amount for institutions for two additional reasons. First, in the interest of uniformity between Federal and State securities regulation, we chose a standard similar to the standard in the Uniform Securities Act of 2002, as amended, that was approved by the National Conference of Commissioners of Uniform State Laws.[52] The model statute, which has been adopted by several states, requires that most non-regulated institutional investors have $10 million in assets to qualify as ''institutional investors.'' In selecting a standard for large accredited investors, we chose to substitute a $10 million investments-owned standard for the $10 million assets-owned standard because, as discussed below, we believe that investments owned may be a more accurate and more easily administered standard than assets owned to determine whether an investor needs the protection of Securities Act registration. The $10 million amount also correlates closely with the inflation-indexed value of $5 million in 1982, when we adopted the $5 million assets-owned standard.[53]

We selected the $2.5 million investments-owned standard for individuals and spouses based on the $2.5 million investments-owned standard we proposed in December 2006 for individuals and spouses to invest in private pooled investment vehicles.[54] We selected the $400,000 in annual income standard for individuals because it is approximately the inflation-indexed value of $200,000 in 1982, when the Commission first adopted the $200,000 in annual income standard for individual accredited investors. Similarly, we selected the $600,000 in aggregate income for spouses standard because it is approximately the inflation-indexed value of $300,000 in 1982. Although the $300,000 combined standard was not adopted until 1988, it was adopted to complement the $200,000 individual income standard adopted in 1982.[55]

Individuals and entities that currently are not subject to a dollar-amount threshold to qualify as accredited investors also would qualify as large accredited investors. As such, banks, registered investment companies, private business development companies, and other regulated entities identified in Rule 501(a)(1) and (2) that are not subject to an assets test to qualify for accredited investor status also would qualify for large accredited investor status without being subject to an income, assets, or investments requirement.[56] Further, directors and executive officers of the issuer would be considered large accredited investors in addition to being considered accredited investors, without being subject to an income, assets, or investments

[45] State securities regulation of covered securities generally is limited under Section 18(b) of the Securities Act to imposing notice filing requirements on offerings, requiring the filing of a consent to service of process, and assessing a filing fee. Securities sold in offerings that are exempt under Rule 506 are covered securities because Section 18(b)(4)(D) provides that securities sold in transactions exempt under Commission rules issued under Section 4(2), which includes Rule 506, are covered securities. Securities sold in offerings that are exempt under Rule 507 would be covered securities because our proposal provides for an amendment to Rule 146 under the Securities Act that would define the term ''qualified purchaser'' in Section 18(b)(3) of the Act to include large accredited investors with respect to offers or sales in compliance with Rule 507. Under Section 18(b)(3), qualified purchasers, as defined by the Commission under the Securities Act, purchase covered securities in transactions so designated by the Commission.

[46] See Proposed Rule 501(a).

[47] See the discussion of the accredited investor definition in II.B below.

[48] While the Model Accredited Investor Exemption is limited to accredited investors, we propose to further limit the Rule 507 exemption to large accredited investors. NASAA, the organization of state securities administrators, recently supported a similar higher threshold for any new federal exemption that would relax the prohibitions against general solicitation and general advertising. See comment letter in Commission File No. 265–23 from NASAA to the Advisory Committee (March 28, 2006) (the ''NASAA Letter''), at 2, available at *http://www.sec.gov/rules/other/265-23/rastaples1692.pdf*.

[49] We discuss our proposed use of the term ''aggregate income'' instead of the term ''joint income,'' which currently is used in Rule 501(a), 17 CFR 230.501(a), in II.B.2 below.

[50] These estimates are based on Federal Reserve Board of Governors, Survey of Consumer Finances, 2004. This survey used year-end 2003 values. More information regarding the survey may be obtained at *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html*.

[51] Our Office of Economic Analysis estimates that in 1982, when Regulation D was adopted, approximately 1.87 percent of U.S. households qualified for accredited investor status. This estimate is based on Federal Reserve Board of Governors, Survey of Consumer Finances, 1983. This survey used year-end 1982 values. More information regarding the survey may be obtained at *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html*.

[52] See Uniform Securities Act (2002), as amended, available at *http://www.uniformsecuritiesact.org/usa/DesktopDefault.aspx?tabindex=2&tabid=48*.

[53] Our Office of Economic Analysis estimates that the financial thresholds used in Rule 501(a), adjusted for inflation as of July 1, 2006, would be as follows: the $5 million asset requirement for certain legal entities would have increased to approximately $9.5 million; the $1 million individual net worth test would have increased to approximately $1.9 million; and the $200,000 individual income test and $300,000 joint income test would have increased to approximately $388,000 and $582,000, respectively. Our Office of Economic Analysis estimated these levels using the Personal Consumption Expenditures Chain-Type Price Index, as published by the Department of Commerce, available at *http://www.bea.gov*.

[54] See Private Pooled Investment Vehicle Release.

[55] See Release No. 33–6758 (March 3, 1988) [53 FR 7866].

[56] See 17 CFR 230.501(a)(1) and (2).

requirement.[57] As in the accredited investor standard, these entities and persons are generally deemed not to need the same level of protection under the Securities Act as other entities and non-affiliated persons.

Request for Comment

- Do the standards we propose for qualifying as a large accredited investor provide a reasonable basis for determining that, under the circumstances of Rule 507, those investors do not need all of the protections of Securities Act registration? If not, what qualifications should we set? Are other levels more appropriate than $10 million in investments for legal entities and $2.5 million in investments for individuals and spouses, or annual income of $400,000 for individuals and $600,000 with one's spouse? Should these levels be lower? Should they be higher, especially because of the availability of limited advertising? For example, would $7.5 million or $15 million in investments for legal entities and $1.5 million or $3.5 million in investments for individuals and spouses, or annual income of $300,000 or $600,000 for individuals and $400,000 or $800,000 with one's spouse be more appropriate levels? Why? Should we adopt an eligible person threshold of $1 million in investments for individuals, as suggested by NASAA? [58] If you propose thresholds, please provide the basis for your belief that those thresholds are more appropriate.

- Should we adopt a definition of ''large accredited investor'' that includes only an investments-owned test for individual investors, as we proposed in the Private Pooled Investment Vehicle Release for certain individual investors in private pooled investment vehicles, or should we adopt alternative investments and income tests as proposed? Please explain the reasons for your views.

- Should we retain the asset-based test instead of using an investment-based test for determining status as a large accredited investor for both individuals and legal entities? In this regard, should the standard for legal entities be $10 million in assets—the same as the requirement for institutional investors in the Uniform Securities Act?

- Would it be appropriate to modify proposed Rule 507 to include any additional safeguards in the definition of large accredited investor?

[57] See 17 CFR 230.501(a)(4).

[58] See n. 48.

2. Limited Advertising Permitted

Rule 507 would permit an issuer in an exempt transaction to publish a limited announcement of an offering.[59] The announcement would be required to state prominently that sales will be made to large accredited investors only, that no money or other consideration is being solicited or will be accepted through the announcement, and that the securities have not been registered with or approved by the Commission and are being offered and sold pursuant to an exemption.[60] At the issuer's option, the announcement also could contain the following additional information:

- The name and address of the issuer;
- A brief description of the business of the issuer in 25 or fewer words; [61]
- The name, type, number, price, and aggregate amount of securities being offered and a brief description of the securities;
- A description of what large accredited investor means;
- Any suitability standards and minimum investment requirements for prospective purchasers in the offering; and
- The name, postal or e-mail address, and telephone number of a person to contact for additional information.[62]

[59] While the proposed statement is similar to the statement permitted under Rule 135c, 17 CFR 230.135c, the proposed exemption is substantially patterned after the Model Accredited Investor Exemption and differs from Rule 135c in that the advertisement is permitted and anticipated to be part of the offering process, whereas Rule 135c is limited to an announcement that is not to be used to condition the market or as part of the solicitation for the offering.

[60] These statements are similar to statements required by the Model Accredited Investor Exemption, except that the proposed announcement is not required to contain a statement that the securities have not been registered with or approved by a state securities agency.

[61] The Model Accredited Investor Exemption limits an issuer's description of the business to 25 or fewer words. We have retained the 25-word limitation in the proposal, but solicit comment below on whether such a limitation is appropriate. We already have one federal exemption from Securities Act registration that permits offerings involving select investors and a limited amount of general solicitation. Our Rule 1001, 17 CFR 230.1001, exempts offerings conducted under Section 25102(n) of the California Corporations Code's ''Qualified Purchaser Exemption.'' Adopted in September 1994, the California provision permits offerings to specified classes of qualified purchasers that are similar to federal classes of accredited investors without state registration. The QPE allows for a general announcement of an offering, including a brief description of the issuer's business, without a word limit. California's QPE served as a prototype for the Model Accredited Investor Exemption.

[62] The additional information permitted in the announcement is patterned after the Model Accredited Investor Exemption, but also permits a description of the meaning of the term ''large accredited investor'' and a discussion of suitability standards and minimum investment requirements. We propose to permit these latter statements to avoid confusion about the meaning of the term ''large accredited investor'' and to facilitate management of offerings under the exemption.

Publication of such an announcement would not contravene the prohibition on general solicitation and advertising otherwise applicable to the offer and sale of securities in a Rule 507 transaction. The publication could only be ''in written form'' [63] but could occur in any written medium, such as in a newspaper or on the Internet. We have proposed to limit the publication to written form in an effort to limit aggressive selling efforts made through the announcement. As part of this limitation, radio or television broadcast spots or ''infomercials'' would be prohibited.[64]

Rule 507 also provides that an issuer or a person acting on an issuer's behalf may provide information in addition to the limited announcement only if the issuer reasonably believes that the prospective purchaser is a large accredited investor.[65] Additional information may be provided orally or in writing, such as in the form of sales material or an offering circular. Information also may be delivered to prospective purchasers through an electronic database that is restricted to large accredited investors.[66]

Request for Comment

- We propose to limit the information included in a Rule 507 announcement and require that the information be in written form. Should we require or permit any other information to be included in the limited announcement proposed in Rule 507 offerings? If so, what additional information would be appropriate? Should any of the optional information be required? Should we eliminate or expand the 25-word limit on the description of the issuer's business? If we did not impose a limit on the business description, would

[63] Proposed Rule 507 uses the term ''in written form'' to limit the term and differentiate the concept from ''written communication'' as defined in Rule 405. 17 CFR 230.405. The term ''written communication'' is defined in Rule 405 to include a radio or television broadcast. Publication of an announcement under Rule 507 would be substantially more limited.

[64] Limiting the use of certain types of advertisements under Rule 507 would be consistent with our position in Rule 433, 17 CFR 230.433, relating to free writing prospectuses in the context of public offerings by non-reporting and unseasoned issuers.

[65] For a related discussion of what measures an issuer could take to satisfy its obligation under Rule 501(a) to form a reasonable belief that a prospective purchaser satisfies the definition of accredited investor, see n. 99 and accompanying text.

[66] For a discussion of on-line private offerings under Regulation D, see Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843].

issuers be more or less likely to use inappropriately promotional and non-objective language to describe their businesses in the limited announcement? Should the rule require that any description of the issuer's business be fair and impartial?

• Should we eliminate the requirement that the Rule 507 announcement be in written form? If so, what limitations, if any, should we have on the form of the announcement? Should we define the phrase ''in written form''? Should we limit permitted written announcements to publications, as opposed to, for example, flyers handed out on street corners? Should we allow radio or television broadcast announcements? Should we follow the Model Accredited Investor Exemption and allow the announcement to be made by any means? Should we require issuers to retain copies of any advertisements or to submit copies of the script of any radio or television broadcast to the Commission staff? Should they be filed with the Commission, and if so, should the filing be confidential?

• Proposed Rule 507 would require issuers to include in any permitted public announcement a prominent statement that sales will be made only to large accredited investors, that no money is being solicited or will be accepted by way of the announcement, and that the securities have not been registered with or approved by the Commission and are being offered and sold pursuant to an exemption. Are these appropriate requirements for the announcement? Should we require additional statements? Do we need to require that the statement be prominent? If so, should we also specify format or font sizes? How would such a requirement operate for electronic communications? Does the requirement that the announcement prominently state that ''no money or other consideration is being solicited or will be accepted through the announcement'' make it clear that an investor should not respond to the announcement by sending a check to the issuer? Can you suggest alternative wording?

• Should we allow issuers, at their option, to include in a Rule 507 announcement a coupon, returnable to the issuer, indicating interest in the offering, containing the name, address and telephone number of the prospective purchaser, and stating clearly and separately that the indication of interest is not binding and that no money should be sent? [67]

• The Model Accredited Investor Exemption does not permit telephone solicitation unless, before placing a telephone call, the issuer reasonably believes the prospective purchaser to be solicited is an accredited investor.[68] Should we include a similar limitation in Rule 507 with respect to large accredited investors?

• The rule provides that an issuer or any person acting on an issuer's behalf may provide additional information if the issuer reasonably believes the prospective purchaser is a large accredited investor. Does the proposal adequately acknowledge that the reasonable belief of an agent of the issuer may be attributable to the issuer and thereby permit the issuer to satisfy the standard? What requirements, if any, should apply to the delivery of information to prospective purchasers through an electronic database that is restricted to large accredited investors? [69] Should we provide additional guidance and if so, should the guidance be in the rule?

• Should the rule provide any guidance as to how an issuer may arrive at a reasonable belief that a prospective purchaser is a large accredited investor? Should it be permitted to form the belief entirely on the basis of responses to a questionnaire?

• Rule 508 provides that insignificant deviations from the requirements of Regulation D do not result in the loss of the exemption.[70] Rule 508(a)(2) provides, however, that failures with regard to limitations on the manner of offering are deemed to be significant. What should be the implications for failure to comply with the restrictions on permitted advertising in Rule 507 transactions? Should the issuer no longer be able to rely on the Rule 507 exemption? Are the provisions of Rule 508 sufficient to deal with situations that might arise?

• Should we adopt broader amendments to Rule 508 to address related issues that might arise under the Rule 507 exemption, as well as under other exemptions in Regulation D? For example, should we delete the current Rule 508 carve-out of manner of sale limitations in the list of insignificant deviations? This carve-out has been read to provide that an issuer's failure to comply with a ban on general solicitation applicable to a Regulation D offering never can constitute an insignificant deviation. As a result, legal practitioners have expressed concern that an insignificant deviation relating to general solicitation could result in total loss of the Rule 508 defense. If the carve-out were deleted, Rule 508 would treat insignificant failures to comply with an applicable ban on general solicitation like most other deviations from the requirements of Regulation D. One effect of such a rule amendment would be to clearly permit issuers to raise the Rule 508 defense with respect to complaining parties who were not generally solicited in an offering structured to avoid general solicitation, while continuing to preclude the issuer from raising the defense with respect to a party who was generally solicited, depending upon whether it is able to satisfy the other conditions to availability of the defense.

3. No Sales to Persons Who Do Not Qualify as Large Accredited Investors

We propose that issuers relying on Rule 507 to exempt a transaction from Securities Act registration be permitted to sell securities only to investors who qualify as large accredited investors. This is a departure from the approach taken in Rule 506, where issuers are permitted to sell securities to up to 35 non-accredited investors, in addition to an unlimited number of accredited investors. Because limited advertising allows issuers to provide information about their offering to anyone, we believe it is appropriate to establish stricter limitations on sales to limit investors to those who do not need all of the protections of Securities Act registration.

A Rule 507 offering could only be conducted simultaneously or ''side-by-side'' with another Regulation D offering if the two offerings were considered as separate and distinct offerings under the five-factor integration test set forth in Rule 502(a) of Regulation D.[71] Since Rule 506 prohibits the use of general solicitation and advertising and Rule 507 is limited exclusively to sales to large accredited investors, neither of these two exemptions would be available if two offerings were

[67] This provision could be modeled after subparagraph (c) of Rule 254 of Regulation A, 17 CFR 254(c). Proposed Rule 135d, although never adopted, had a similar provision in subparagraph (b). See Release No. 33–7188 (June 27, 1995) [60 FR 35648].

[68] Paragraph (G) of the Model Accredited Investor Exemption provides that no telephone solicitation is permitted unless the issuer reasonably believes that the person solicited is an accredited investor before making the telephone solicitation. Proposed Rule 507(b)(2)(iii) provides that any information beyond the announcement may be provided ''only if the issuer reasonably believes that the prospective purchaser is a large accredited investor,'' but does not address telephone solicitation explicitly.

[69] See n. 66.

[70] We propose to amend Rule 508 to add a reference to proposed Rule 507.

[71] 17 CFR 230.502(a). We are proposing a note to clarify that Rule 144A does not preclude an issuer or a person acting on the issuer's behalf from publishing a general announcement of an offering pursuant to Rule 507. See II.E.2 below.

considered as integrated where one offering used limited public advertising and the other offering was sold to persons who were not large accredited investors.[72]

Request for Comment

- Should we permit investors who do not qualify as large accredited investors to invest in Rule 507 offerings? If so, how should we limit the number of non-qualifying investors? Would permitting investors who do not qualify as large accredited investors to invest in Rule 507 offerings increase the potential for fraud in those offerings?
- To limit sales to large accredited investors, would it be appropriate to limit publication of the announcement to password-protected Web sites that are accessible only by large accredited investors? Should we provide other limitations to ensure that the exemption is not abused?

4. Authority for Exemption

We are proposing Rule 507 as an exemption from the registration provisions of Section 5 of the Securities Act under our general exemptive authority in Section 28 of that Act. Under Section 28, we may exempt any transaction from any provision of the Securities Act ''to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [73]

We believe proposed Rule 507 meets the standard set forth in Section 28 because it safeguards investor interests by limiting both the advertising permitted and the types of investors that may invest in an exempt offering. The proposal would impose strict controls on advertising and would be limited to offerings that are sold only to investors who meet high financial qualification standards designed to identify investors who have less need for the protections offered by Securities Act registration, as they can ''fend for themselves'' with regard to the transaction.[74]

Proposing Rule 507 under Section 28, rather than Section 4(2),[75] has certain consequences. Among these consequences is that pooled investment vehicles that rely on the exclusion from the definition of ''investment company'' provided by Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act would not be able to take advantage of the limited advertising proposed to be permitted under Rule 507. This results because those vehicles are required to sell their securities in transactions not involving a public offering.[76] Such vehicles typically rely on Section 4(2) to meet this requirement, frequently through Rule 506, which expressly forbids general solicitation and general advertising.[77] Accordingly, they would be precluded from selling their securities in reliance on Rule 507.

Request for Comment

- Are there other implications we should consider as a result of our proposed use of our exemptive authority under Section 28, rather than proposing Rule 507 under Section 4(2)?

5. Covered Security Status

Securities sold under Rule 506 are ''covered securities'' under Section 18(b)(4)(D) of the Securities Act.[78] To enhance the utility of proposed Rule 507, we propose that a large accredited investor that participates in a Rule 507 offering be defined in Rule 146 as a ''qualified purchaser'' under Section 18(b)(3) of the Securities Act. As such, securities sold in a Rule 507-exempt offering would be ''covered securities,'' resulting in preemption from state securities regulation as provided under Section 18 of the Securities Act.[79] By providing ''covered security'' status to the securities, the securities would be primarily regulated on the federal level, with the goal of enhancing efficiency and reducing duplicative regulation without compromising investor protection. Because the dollar-amount thresholds for investors in Rule 507 transactions would be significantly higher than the dollar-amount thresholds in Rule 506 offerings, we believe the policy rationales for making securities in Rule 506 transactions ''covered securities'' also support making securities in Rule 507 transactions ''covered securities.'' [80]

Request for Comment

- We propose to amend Rule 146 to define the term ''large accredited investor'' as a ''qualified purchaser'' for purposes of Section 18 of the Securities Act. Is defining a ''large accredited investor'' as a ''qualified purchaser'' under the Securities Act appropriate? Should the definition of ''qualified purchaser'' be narrower or broader?
- Proposed Rule 146(c) includes a provision that indicates clearly that states may continue to impose substantially similar notice filing requirements as those imposed by the Commission on transactions with qualified purchasers. Is this provision necessary? Should we define ''substantially similar'' more precisely? If so, please provide specific language. Would the proposed language preclude states from requiring that certain supplemental items be attached to notice filings?

B. Proposed Revisions Related to Definition of ''Accredited Investor''

We propose revisions to the definition of the term ''accredited investor'' in

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[72] We do not propose to provide an integration safe harbor for Rule 507 offerings as was done, for example, in Section 3(c)(7)(E) of the Investment Company Act, 15 U.S.C. 80a–3(c)(7)(E), and under 17 CFR 230.144A(e) and 17 CFR 230.701(f).

[73] 15 U.S.C. 77z–3.

[74] The conclusion that investors do not need all the protections that registration under the Securities Act would offer them and that they can fend for themselves is the determination that must be made under *SEC* v. *Ralston Purina*, 346 U.S. 119, 125 (1953), to establish that transactions are exempt under Section 4(2) of the Securities Act as transactions ''not involving any public offering.'' We believe the *Ralston Purina* standard is informative in analyzing whether Rule 507, as proposed, would satisfy the Section 28 standard. As a practical matter, we believe that the use of high financial thresholds to qualify as a large accredited investor and the imposition of a ban on most general solicitation and advertising would tend to support a determination that Rule 507 is appropriate in the public interest and consistent with the protection of investors.

[75] Because some advertising would be permitted in Rule 507 transactions, we have chosen not to propose the exemption under Section 4(2) of the Securities Act, which the Commission in the past has viewed as incompatible with a non-public offering under Section 4(2). See n. 37.

[76] Section 3(c)(1) of the Investment Company Act excludes from the definition of investment company an issuer the securities (other than short-term paper) of which are beneficially owned by not more than 100 persons and that is not making or proposing to make a public offering of its securities. Section 3(c)(7) of the Investment Company Act excludes from the definition of investment company an issuer the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are ''qualified purchasers,'' as defined in the Investment Company Act, and that is not making or proposing to make a public offering of its securities. The term ''qualified purchaser'' is defined for purposes of the Investment Company Act in Section 2(a)(51) of the Investment Company Act, 15 U.S.C. 80a–2(a)(51). This definition applies in the context of the Investment Company Act; the term has a different meaning under the Securities Act, as provided in the proposed amendment to Rule 146(c).

[77] Compliance with Rule 506 provides a safe harbor that a transaction does not involve ''any public offering'' within the meaning of Section 4(2) of the Securities Act. See 17 CFR 230.506(a).

[78] The National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996) (''NSMIA''), preempts the state registration and review of transactions involving ''covered securities.'' It amended Section 18 of the Securities Act to establish classes of covered securities, including securities offered or sold to ''qualified purchasers,'' as defined by Commission rule.

[79] In 2001, we proposed to define the term ''qualified purchaser'' in the Securities Act to equate that term with our definition of the term ''accredited investor'' in Rule 501(a). See Release No. 33–8041 (Dec. 19, 2001) [66 FR 66839]. That proposal is no longer under consideration by the Commission.

[80] These policy rationales are contained in the legislative history of NSMIA, especially H.R. Rep. No. 104–622, at 159–165 (1996).

Rule 501(a) of Regulation D, which sets forth the standards to qualify as an accredited investor. The current definition provides that a person who comes within, or who the issuer reasonably believes comes within, one of eight enumerated categories at the time of sale is an accredited investor. Currently, the Rule 501(a) categories include:

- Institutional investors; [81]
- Private business development companies;
- Corporations, partnerships and tax exempt organizations with total assets in excess of $5 million;
- Directors, executive officers and general partners of the issuer;
- Individuals with a net worth exceeding $1 million, either alone or with their spouses;
- Individuals with income in excess of $200,000 in each of the two most recent years or joint income with the individual's spouse in excess of $300,000 in each of those years;
- Trusts with total assets in excess of $5 million; and
- Entities in which all of the equity owners are accredited investors.

The revisions we propose to the Rule 501(a) ''accredited investor'' qualification standards would affect Rules 504 through 506 and, to the extent that the standards to qualify as a ''large accredited investor'' are based on the standards to qualify as an ''accredited investor,'' Rule 507.[82] We believe our proposed revisions of the qualification standards for accredited investors will result in those standards, together with the substantive provisions of the exemptions in Regulation D, better determining who meets the requirements for reliance on the exemptions. Our proposed revisions would:

- Add an alternative ''investments-owned'' standard to Rule 501(a);
- Define the term ''joint investments'';
- Establish a mechanism to adjust the dollar-amount thresholds in the definitions in the future to reflect inflation; and
- Add several categories of permitted entities to the list of accredited and large accredited investors.

In addition, in the Private Pooled Investment Vehicle Release, we proposed to revise Regulation D to establish a new category of accredited investor, ''accredited natural person,'' that individuals would need to satisfy in order to invest in certain private pooled investment vehicles relying on Rule 506.[83] We are continuing to consider the comments received on that proposal. We also are taking the opportunity to solicit further comment on the questions we asked in December 2006 when we issued that proposal, especially in light of the new proposals in this release, and to solicit comment on additional questions on the proposal, as discussed below.

1. Adding Alternative Investments-Owned Standards to Accredited Investor Standards

Rule 501(a) currently provides generally that certain legal entities must have total assets in excess of $5 million to qualify as accredited investors, that individuals and spouses may qualify if they have a net worth above $1 million, that individuals also may qualify if they have annual income above $200,000, and that spouses also may qualify if they have annual income above $300,000. We propose to add alternative standards for these entities and for individuals and spouses in Rule 501(a) that reflect investments owned by the prospective investor as an additional and alternative method of establishing accredited investor status.[84] We believe an investments-owned standard will add another, potentially more accurate method to assess an investor's need for the protections of registration under the Securities Act. We also believe an investments-owned standard may reduce and simplify compliance burdens for companies by providing an alternative standard that may be assessed more easily than the current assets or net worth or annual income standards.

a. Proposed Definition of ''Investments''

We propose a definition of ''investments'' for purposes of qualifying for accredited investor and large accredited investor status that is substantively the same as the definition we proposed in December 2006 in the Private Pooled Investment Vehicle Release.[85] However, in order to establish a uniform definition that applies throughout Regulation D, the newly proposed definition contains slight differences. The Private Pooled Investment Vehicle Release proposed separate definitions for the terms ''prospective accredited natural person,'' ''related person,'' ''investment purposes,'' ''valuation,'' and ''deductions.'' [86] Our current proposal replaces the term ''prospective accredited natural person'' with the term ''purchaser.'' In addition, the concepts underlying the terms ''related person,'' ''investment purposes,'' ''valuation,'' and ''deductions'' are discussed in the notes to the definition of ''investments'' in our current proposal rather than as separate definitions, as was done in the Private Pooled Investment Vehicle Release.[87] We believe including these concepts as notes to the definition of ''investments'' in proposed Rule 501(h) will provide greater clarity and ease use of the definition.

b. Amount of Investments Required

For legal entities required to satisfy a $5 million assets test, the proposed amendment would add an alternative investments standard of $5 million. For individuals and spouses, the proposed amendment would provide a new alternative standard of $750,000 in investments that could be used instead of the current net worth standard of $1 million or annual income standards of $200,000 (or $300,000 with one's

[81] This category includes banks, savings and loan associations, registered brokers and dealers, insurance companies, registered investment companies, business development companies, and small business investment companies. The category also includes certain employee benefit plans within the meaning of the Employee Retirement Income Security Act (codified primarily at 29 U.S.C. ch. 18), with total assets in excess of $5 million. See Rule 501(a)(1).

[82] The revisions may affect offerings made by pooled investment vehicles under Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, as those offerings must qualify as non-public offerings under Section 4(2) of the Securities Act and many such offerings are structured to take advantage of the Rule 506 safe harbor for the Section 4(2) exemption. We recently proposed revisions to our accredited investor qualification standards for individuals investing in certain pooled investment vehicles. See II.B.5 below.

[83] Proposed Rules 216 and 509 under the Securities Act.

[84] As explained above with respect to large accredited investors, an investments-owned standard would be an alternative to the income standards for establishing large accredited investor status for individuals and spouses and the sole method for establishing large accredited investor status for entities that must satisfy a dollar-amount threshold.

[85] The standard proposed in December 2006 would require investors to satisfy a two-part test—they would be required to be an accredited investor, as defined in Rule 501(a)(5) or (6) for transactions offered under Rule 506 or Rule 215(e) or (f) for transactions under Section 4(6) of the Securities Act (15 U.S.C. 77d(6)), and to own at least $2.5 million in ''investments,'' as that term would be defined in Rule 509 as proposed in the Private Pooled Investment Vehicle Release.

[86] Unlike in the Private Pooled Investment Vehicle Release, we have not here proposed a definition of ''certain retirement plans and trusts'' for use in our proposed definition of ''investments.'' We assume that investments held in retirement plans and trusts would be included in our proposed definition of investments.

[87] In order to simplify the definition of ''investments,'' we included the concepts of ''related person'' and ''deduction'' in the notes as they relate to ''investment purposes'' and ''valuation,'' respectively. See proposed notes 1 through 3 to paragraph (h) of Rule 501.

spouse).[88] We proposed an investments-owned standard as part of our December 2006 proposal for a new category of accredited investor, the ''accredited natural person,'' which was developed to address eligibility for individuals to invest in private pooled investment vehicles that rely on the exclusion from the definition of the term ''investment company'' provided by Section 3(c)(1) of the Investment Company Act.[89]

Unlike the December 2006 proposed definition, the proposed alternative standards would not result in a reduction in the number of investors eligible for accredited investor status; rather, the standard is intended to ease issuers' threshold determinations and provide a possibly more logical basis for them.[90] In determining whether an investor meets the threshold under the investments-owned standard, the value of personal residences and places of business would not be included. Although we recognize that we have historically included (and may continue to include) personal residences and places of business as assets in calculating total assets for legal entities and net worth for individuals, we believe, consistent with our December 2006 proposed definition, that an accurate method of assessing an investor's need for the protections of registration under the Securities Act when based on an investments test is to exclude these real estate assets from the definition of investments, since they are not held for investment purposes.[91]

Accordingly, real estate would not be considered to be held for ''investment purposes'' if the real estate is used by the person or certain related persons for personal purposes (*e.g.*, as a personal residence).[92] The term ''personal purposes'' is derived from the Internal Revenue Code provision that addresses circumstances under which a taxpayer is allowed deductions with respect to certain ''dwelling units.'' [93] The proposed definition refers to the Internal Revenue Code because it would allow determinations of whether residential real estate is an investment based on the same provisions that would apply in determining whether certain expenses related to the property are deductible for purposes of completing tax returns. Similarly, property that has been used as a place of business or in connection with the conduct of a trade or business also would not be considered to be held for investment purposes.[94]

Request for Comment [95]

- Are the dollar-amount thresholds for the proposed investments-owned standard appropriate? Are other levels more appropriate than the $5 million in investments for legal entities and $750,000 in investments for individuals and spouses? Should these levels be higher or lower? For example, would $4 million in investments for legal entities and $500,000 in investments for individuals and spouses be more appropriate levels? Why?
- Is there a better way to define ''investments'' to meet the goals of the standard in Regulation D? Is our proposed definition of investments too complicated? Should we specifically include additional types of investment asset classes in the definition of investments? Should we exclude or limit any of the investment asset classes we have proposed for inclusion?
- We are proposing a definition of ''investments'' in proposed paragraph (h) of Rule 501 that is substantially similar to the definition in proposed Securities Act Rule 509(b)(3) [96] and existing Investment Company Act Rule 2a51–1(b).[97] Should we adopt a less technical, more principles-based definition of ''investments''? Would a more principles-based definition be more appropriate for the many smaller companies and small businesses with limited resources that commonly use Regulation D, sometimes operating without sophisticated legal counsel? If a more principles-based definition would be more appropriate, should the rule define ''investments'' as meaning cash and cash equivalents, securities, real estate, commodities, and commodity interests held for investment purposes, provide that the value of investments be calculated ''net of investment indebtedness,'' and provide that investment purposes would not include use of real estate by a prospective purchaser as a primary or secondary residence or primary place of business?
- Should we specifically exclude from the definition of investments real estate used as a primary residence or primary place of business? Should we exclude secondary residences? Is it appropriate to include secondary residences that are not held for investment purposes? Would it be appropriate to specify in the rule that residential real estate that currently qualifies for the home mortgage interest deduction under the Internal Revenue Code is the type of residential real estate that would be excluded for purposes of determining investments owned? Commenters are asked to discuss why they believe that real estate of the kind excluded should or should not be counted as an investment under the rules and why.
- Our proposed definition of ''investments'' excludes securities that constitute a ''control interest'' in an issuer. Limiting the definition in this manner is designed to exclude, among other things, controlling ownership interests in family-owned and other closely-held businesses.[98] Such holdings may not demonstrate the lack of need for protection of the Securities Act registration provisions. Proposed

[88] We are proposing the $750,000 investments-owned standard because the dollar-amount threshold is the same as the dollar-amount threshold initially proposed in Regulation D for the assets test, which, as initially proposed, excluded certain assets, including personal residences. The assets threshold was increased to $1 million and adopted for the sake of simplicity and reflected a $250,000 increase in large part to account for the value of the primary residence. See Release No. 33–6389, at 11255.

[89] See n. 76.

[90] As proposed, there would be no changes to the current standards for accredited investors in Regulation D that would decrease the existing pool of potential investors. We do not believe these amendments would substantially change the number of investors now eligible for accredited investor status. Based on the 2004 Federal Reserve survey cited in n. 50, our Office of Economic Analysis estimates that adding an alternative $750,000 investments standard to the current accredited investor standard for natural persons (net worth in excess of $1 million or individual income in excess of $200,000 (or $300,000 with the person's spouse)) would result in 8.69 percent of households qualifying for accredited investor status in 2003, as opposed to 8.47 percent of households qualifying for accredited investor status without the proposed alternative.

[91] This approach follows the proposed approach in the Private Pooled Investment Vehicle Release. Commenters generally preferred including the primary residence in the valuation of investments. We continue to consider those comments, but are again proposing to exclude the primary residence when determining the value of investments, as the value of an individual's primary residence may have little relevance with regard to the individual's need for the protections of Securities Act registration.

[92] See proposed Note 1 to Rule 501(h).

[93] The proposed rule would treat residential real estate as an investment if it is not treated as a dwelling unit used as a residence in determining whether deductions for depreciation and other items are allowable under the IRC. Section 280A of the IRC provides, among other things, that a taxpayer uses a dwelling unit during the taxable year as a residence if he or she uses such unit for personal purposes for a number of days that exceeds the greater of 14 days or 10 percent of the number of days during which the unit is rented at a fair rental. 26 U.S.C. 280A.

[94] See proposed Note 1 to Rule 501(h).

[95] We intend to consider comments we receive in response to this request for comment along with the comments on the Private Pooled Investment Vehicle Release.

[96] See the Private Pooled Investment Vehicle Release.

[97] 17 CFR 270.2a51–1(b).

[98] For a more in-depth discussion of the concept of investments as used in proposed Rule 501(h), proposed Rule 509(b)(3) and Rule 2a51–1(b)(1), see the adopting release for Rule 2a51–1, Release No. IC–22597 (Apr. 3, 1997) [62 FR 17511].

Rule 501(h) and proposed Rule 509(b)(3) and the underlying existing rule upon which these two proposals are based, Rule 2a51–1(b)(1), all contain the same exceptions from the control interest exclusion—interests in ''investment vehicles,'' ''public companies'' and ''large private companies''—all of which are defined in Rule 2a51–1. Should these three exceptions be omitted from the definition of investments or referred to in Rule 501(h) in a shorter, more principles-based definition so as to be easier to comprehend?

• Note 3 to proposed Rule 501(h) indicates that the value of investments is the fair market value on the most recent practicable date or their cost and that the determination is made net of any outstanding indebtedness incurred to acquire or for the purpose of acquiring the investments. Would it be appropriate to provide that the test be the higher or lower of fair market value or cost, or solely fair market value? Should we simply use the concept of net of investment indebtedness or is it more helpful to have a more detailed explanation of the deductions?

• Does an investments-owned standard serve as a better proxy than a net worth or total assets standard for determining whether an investor is among those investors who do not need the protections of Securities Act registration? Would an investments-owned standard be a more appropriate determinant of accredited investor status than the current net worth standard?

• Our experience indicates that some issuers may not have taken appropriate measures to satisfy their obligation under Rule 501(a) to form a reasonable belief that a prospective purchaser satisfied the definition of accredited investor. What additional measures could and should we take to improve issuers' understanding and practices in this area? Should we create a safe harbor in Regulation D that sets forth the type of investigation required for an issuer to reach a reasonable belief? Would it be appropriate to set forth in the safe harbor that an issuer must conduct a reasonable investigation in order to come to a reasonable belief? Are there other modifications to the existing requirements under Regulation D that would improve issuers' practices in forming a reasonable belief that prospective purchasers satisfy the definition of accredited investor? Should we provide specific details as to what kind of investigation an issuer can rely upon to form a reasonable belief, as we did in Rule 144A(d)(1)?[99] What other criteria or methods could be used by issuers to form a reasonable belief that an investor is accredited? Or would any of the foregoing render the rule less usable for capital formation?

2. Proposed Definition of ''Joint Investments''

Our rules currently allow issuers to count all of the assets that an individual owns jointly with a spouse or that are part of a shared community interest in the calculation of whether the individual is an accredited investor under Rule 501(a)(5) because the individual has a ''joint net worth'' with the spouse of more than $1 million. In the Private Pooled Investment Vehicle Release, we proposed to take a different approach to determining eligibility for accredited investor status by reason of assets owned by a spouse or as part of a shared community interest in calculating ''joint investments.''[100] We propose to take that same approach in calculating ''joint investments'' to apply throughout Regulation D. We propose a simplified definition of the term ''joint investments'' to apply throughout Regulation D that retains the substantive meaning of the definition proposed in the Private Pooled Investment Vehicle Release.

The definition of ''joint investments'' that we propose provides that investments of an individual seeking to make an investment in a Regulation D-exempt offering without obtaining the signature and binding commitment of his or her spouse may include only 50 percent of:

• Any investments held jointly with the individual's spouse; and

• Any investments in which the individual shares a community property or similar shared ownership interest with the individual's spouse.

Where spouses both sign and are bound by the investment documentation, the full amount of their investments (whether made jointly or separately) may be included for purposes of determining whether the investors are either accredited or large accredited investors.[101]

To avoid confusion and clarify language in other parts of Rule 501 in connection with the ''joint investments'' proposal, we propose to change the words used to describe the threshold for spouses to qualify for accredited investor status on the basis of net worth under Rule 501(a)(5) from ''joint net worth'' to ''aggregate net worth'' and to change the words used to describe the income threshold for spouses to qualify as accredited investors under Rule 501(a)(6) from ''joint income'' to ''aggregate income.'' We also would use the ''aggregate income'' terminology in the definition of large accredited investor. We believe these changes are advisable to avoid confusion between the interpretation of the word ''joint'' in the context of the term ''joint investments'' and in the context of the terms ''joint net worth'' and ''joint income.'' Our previous releases and staff interpretations in this area have used the terms ''joint net worth'' and ''joint income'' to mean aggregate net worth and aggregate income, and we do not intend for these changes to alter the meaning of the rules.[102]

Request for Comment

• Does the proposed joint investments approach properly address the application of the accredited investor standard to marital assets? Should we base the determination as to whether marital assets may be considered in determining the accredited investor status of individual spouses on something other than whether both spouses sign and are bound by the investment documentation?

• Under Rule 501(a)(5) as we propose to amend it, an issuer could count 100

[99] 17 CFR 230.144A(d)(1). In determining whether a prospective purchaser is a qualified institutional buyer, Rule 144A(d) provides that a seller and any person acting on its behalf are entitled to rely upon the following non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investment of securities: (i) The prospective purchaser's most recent publicly available financial statements; (ii) the most recent publicly available information appearing in documents filed by the prospective purchaser with the Commission or another U.S. federal, state, or local government agency or self-regulatory organization, or with a foreign governmental agency or self-regulatory organization; (iii) the most recent publicly available information appearing in a recognized securities manual; or (iv) a certification by the chief financial officer, a person fulfilling an equivalent function, or other executive officer of the purchaser, specifying the amount of securities owned and invested on a discretionary basis by the purchaser as of a specific date on or since the close of the purchaser's most recent fiscal year.

[100] Private Pooled Investment Vehicle Release at 407.

[101] We received substantial comment on this issue in response to the Private Pooled Investment Vehicle Release, urging that we permit a spouse's assets to be included in any calculation for determining an investor's accreditation. See, *e.g.*, comment letters in Commission Rulemaking File No. S7–25–06 from American Bar Association (Mar. 12, 2007) (the ''ABA Private Pooled Investment Vehicle Letter''), available at *http://www.sec.gov/comments/s7-25-06/s72506-584.pdf,* and New York State Bar Association (Mar. 14, 2007), available at *http://www.sec.gov/comments/s7-25-06/s72506-597.pdf.* We continue to consider this issue.

[102] For a discussion of ''joint net worth,'' see Release No. 33–6389, at n. 14 (Mar. 8, 1982) [47 FR 11251]. For a discussion of ''joint income,'' see Release No. 33–6683 (Jan. 16, 1987) [52 FR 3015] and Release No. 33–6758 (Mar. 3, 1988) [53 FR 7866].

percent of the assets held jointly with an individual's spouse or as part of a shared community interest in determining, on the basis of net worth, the eligibility for accredited investor status of an individual investing without his or her spouse but only 50 percent of those same assets (if they are investments) in determining eligibility on the basis of investments owned. Is this approach workable? Should we treat assets of a spouse the same regardless of whether an individual investor is qualifying on the basis of net worth or investments owned? For instance, should we permit an issuer to include only 50 percent of an individual investor's marital assets in calculating both net worth and investments owned? Or should we permit the issuer to include 100 percent or some other part of the marital assets?

• We believe that the definition of joint investments proposed today does not reflect any material change in substance from the definition of joint investments proposed in the Private Pooled Investment Vehicle Release. Would adopting both definitions, with their immaterial differences, create confusion, and why? Would it create less confusion and be more appropriate to modify the definition of joint investments in proposed Rule 216 and proposed Rule 509 to mirror the definition we propose today?

3. Future Inflation Adjustments

Our staff recently indicated that ''inflation, along with the sustained growth in wealth and income of the 1990s, has boosted a substantial number of investors past the 'accredited investor standard.' '' [103] By not adjusting these dollar-amount thresholds upward for inflation, we have effectively lowered the thresholds in terms of real purchasing power.[104] We recognize, however, that raising the accredited investor standards of Regulation D too high may result in some issuers returning to pre-1982 practices of effecting private placements under the statutory exemption in Section 4(2) and forgoing the Regulation D safe harbor. This result may not be desirable for issuers or for the health of our private capital markets because issuers would be required to incur the expenses and complications of multi-state securities law compliance and the uncertainty of case law interpretations of the Section 4(2) exemption, as was the case before the adoption of Regulation D.[105] In addition, regulators and investors would no longer be provided with Form D filings, which help in monitoring private placement activity.[106] Accordingly, we are reluctant at this time to immediately adjust upward for inflation the current income requirements and investment thresholds in Rule 501(a).

Instead, at this time we propose to adjust for inflation all dollar-amount thresholds set forth in Rule 501 of Regulation D on a going forward basis, starting on July 1, 2012, and every five years thereafter, to reflect any changes in the value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the Department of Commerce, from December 31, 2006.[107] We propose to round the adjusted dollar amounts to the nearest multiple of $10,000. By adjusting the thresholds for inflation in the future, we intend to retain the income, assets, and investments requirements in real terms so that the accredited investor standards will not erode over time.[108]

Request for Comment

• We have noted the effects of inflation on the total assets, net worth, and income thresholds currently used in the accredited investor qualification standards. Should we make a one-time adjustment now to the thresholds to increase them to take into account the effects of inflation?

• Is our proposal to adjust the dollar-amount thresholds in Regulation D every five years in the future and the methodology that we have proposed for this purpose appropriate? Should the time period between adjustments be longer or shorter than five years? Should the adjusted dollar amounts be rounded to the nearest multiple of $10,000, as proposed, or to a different nearest multiple, such as $50,000 or $100,000? What would the impact of this inflation adjustment be on the ability of companies to raise capital, particularly small businesses?

• Is there more appropriate data to use that would support different conclusions as to our proposal to adjust Regulation D dollar-amount thresholds for inflation? Is there a more appropriate way to interpret the data that we have provided?

• Is another index more appropriate for our purposes than the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the Department of Commerce?

4. Adding Categories of Entities to List of Accredited and Large Accredited Investors

The definition of accredited investor in Rule 501(a)(3) currently includes a list of legal entities that may qualify as accredited investors, assuming they satisfy other conditions. The list includes organizations described in Section 501(c)(3) of the Internal Revenue Code,[109] corporations, Massachusetts or similar business trusts, and partnerships. It does not include limited liability companies, Indian tribes, labor unions, governmental bodies, and similar legal entities, leading to some degree of uncertainty as to whether these types of entities may qualify as accredited investors.

Accordingly, we propose to amend the Rule 501(a)(3) list of legal entities so that it includes any corporation (including any non-profit corporation), Massachusetts or similar business trust, partnership, limited liability company, Indian tribe, labor union, governmental body or other legal entity with substantially similar legal attributes. We also would add a definition of the term ''governmental body'' to Rule 501(a), similar to the definition of that term that appears commonly in transactional financing documents.[110] Our staff is regularly asked questions about which entities may qualify as accredited investors, and has provided guidance that limited liability companies and certain governmental units may so qualify.[111] We hope these changes will

[103] See *Implication of the Growth of Hedge Funds,* Staff Report to the U.S. Securities and Exchange Commission (Sept. 2003) available at *http://www.sec.gov/news/studies/hedgefunds0903.pdf.*

[104] See n. 53 and the discussion in II.A.1.

[105] For transactions that are exempt under Rule 506, the federal preemption of most state securities regulation under Section 18(b)(4)(D) of the Securities Act would apply.

[106] The current version of Form D was developed by the Commission and NASAA as a uniform form to be filed with both the Commission and the States. See Release No. 33–6663 (Oct. 2, 1986) [51 FR 36385]. Form D continues to be accepted and used by many states to monitor private placement activity.

[107] This index was selected based on discussions with the Federal Reserve Bank and wide use of the index as an indicator of inflation in the U.S. economy. Adjusting thresholds every five years ensures that the thresholds stay current while limiting the disruption caused by changing the threshold.

[108] This is the same method we have proposed to apply to the accredited natural person standards we proposed for private pooled investment vehicles. See the Private Pooled Investment Vehicle Release, at 406.

[109] 26 U.S.C. 501(c)(3).

[110] See, *e.g.,* Section of Business Law, American Bar Association, Model Stock Purchase Agreement with Commentary, at 15–16 (1995). Our proposed definition of ''governmental body'' would apply only to the definition of ''accredited investor'' in Rule 215 and Rule 501(a), which apply only in the context of exempt offerings under Section 4(6) and Regulation D.

[111] In this regard, see Division of Corporation Finance no-action letter to *Wolf, Block, Schorr and*

reduce uncertainty and legal costs and promote more efficient private capital formation.

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• Should we add or delete types of legal entities from the list in paragraph (a)(3) of Rule 501? For example, should we specifically include ''joint venture'' or ''college or university endowment'' in the list, or is it clear that they would be covered by the proposed language of the rule? [112] Should we delete the list entirely and simply say that any legal entity that can sue or be sued in the United States, assuming it meets the other standards for becoming an accredited investor, can qualify as an accredited investor?

• Should we define the terms ''Indian tribe'' and ''labor union'' and, if so, how? For example, should we define ''Indian tribe'' in terms of a tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994? [113] Should we include state-recognized Indian tribes? Should we make any special provision for labor union pension funds?

• When we first proposed Rule 144A, we noted that the type of ''qualified institutional buyers'' contemplated under that rule would generally include ''very large institutions, long involved in the resale market for restricted securities, as to which there has been little concern with respect to Section 5 implications.'' [114] As a result, we looked to the list of institutional accredited investors contained in Rule 501(a)(3) to develop the Rule 144A(a)(1)(i)(H) list of qualified institutional buyers. Because we are now proposing to amend Rule 501(a)(3) by expanding the list of institutional accredited investors, we are seeking comment on whether the Rule 144A(a)(1)(i)(H) list of qualified institutional buyers should be expanded in a similar manner. Is it appropriate to consider all institutions that would come under Rule 501(a)(3) and that meet the $100 million investment size threshold under Rule 144A as having sufficient experience with the resale market for restricted securities? Should any or all of the categories of institutional accredited investors contained in Rule 501(a)(3) be included in the Rule 144A(a)(1)(H) list of qualified institutional buyers? Are there any categories of institutions included in proposed Rule 501(a)(3) that should not be included in the definition of qualified institutional buyer under Rule 144A?

• Rule 144A contains few procedural restrictions relating to the transferability of restricted securities sold under Rule 144A. Do we need to make any modifications in light of the possibility that, if we were to expand the definition of qualified institutional buyer under Rule 144A, these restrictions would lead to a greater likelihood of restricted securities flowing into the public market?

5. Proposed Definition of Accredited Natural Person

In the Private Pooled Investment Vehicle Release, we expressed our concerns about the increased number of individual investors who may today be eligible as accredited investors to make investments in pooled investment vehicles relying on Section 3(c)(1) of the Investment Company Act. We noted that the existing $1 million net worth and $200,000 ($300,000 with one's spouse) income tests provide some investor protection for individuals seeking to invest in pooled investment vehicles relying on Section 3(c)(1) of the Investment Company Act, but expressed our concern that some further level of protection may be necessary to safeguard investors seeking to make an investment in such vehicles in light of their unique risks, including risks with respect to undisclosed conflicts of interest, complex fee structures, and the higher risk that may accompany such vehicles' anticipated returns. Accordingly, we proposed for comment a standard that would require individual investors to satisfy a two-part test to qualify as accredited investors for purposes of investing in certain private pooled investment vehicles—they would be required to satisfy the current standard to qualify as accredited investors, as defined in (i) Rule 501(a)(5) or (6) for transactions under Rule 506 or (ii) Rule 215(e) or (f) for transactions under Section 4(6) of the Securities Act, and also to own at least $2.5 million in ''investments,'' as that term would be defined in proposed Rule 509 or proposed Rule 216, as applicable.

We recognize that if we adopt the alternative investments-owned standard for individuals in the definition of accredited investor in proposed Rule 215(e) and Rule 501(a)(5) ($750,000) and the investments-owned standard for the definition of accredited natural person in proposed Rule 216 and Rule 509 ($2.5 million), an individual who meets the investment test as an accredited natural person would also meet the investments test as an accredited investor. We believe that the different amounts applicable under the definitions are targeted to address concerns about the nature of different types of offerings. As noted, the alternative investments-owned standards proposed under the definition of accredited investor are designed to add another method to assess an investor's need for the protections of registration under the Securities Act. The additional and higher investments-owned standard proposed in the definition of accredited natural person is intended to provide a more objective and clearer standard to use in ascertaining whether an individual is likely to have sufficient knowledge and experience in financial and business matters to enable that investor to evaluate the merits and risks of a prospective investment in certain private pooled investment vehicles, or to be able to hire someone with such knowledge and experience who may help the individual to make such an evaluation.

We received numerous comments disagreeing with the proposed definition of accredited natural person. Most of those submitting comments argued that the proposal limits investor access to private pooled investment vehicles and questioned the dollar amount of the investments standard. In light of those comments, we are soliciting additional comments on the following points.

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• We request comment on whether we should revise the proposed definition of accredited natural person to include alternative income and investment standards similar to those used in the definition of ''large accredited investor'' in proposed Rule 507 (income of $400,000 (or $600,000 with one's spouse) or investments of $2.5 million). Would such a revision address some of the concerns noted by those who submitted comments on the

Solis-Cohen (Dec. 11, 1996) (limited liability companies), and Release No. 33–6455 (Mar. 4, 1983) [48 FR 10045] at Q & A 19, citing Division of Corporation Finance no-action letter to *Voluntary Hospitals of America, Inc.* (Dec. 30, 1982) (governmental unit that falls within the substantive description of 26 U.S.C. 501(c)(3)).

[112] As originally proposed, the definition of ''accredited investor'' in Regulation D specifically included college or university endowment funds. See Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791]. Upon adoption, college or university endowment funds were intended to be included within the category ''organization[s] described in Section 501(c)(3) of the Internal Revenue Code.'' See Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251]. Since we now propose to replace the phrase ''organization described in Section 501(c)(3) of the Internal Revenue Code'' with a reference to non-profit corporations, we seek to assure that college and university endowment funds will still be considered accredited investors if they satisfy the applicable financial standard.

[113] 25 U.S.C. 479a.

[114] See Release No. 33–6806 (Oct. 25, 1988) [53 FR 33147].

Private Pooled Investment Vehicle Release? Would a higher (*e.g.*, $500,000 (or $700,000 with one's spouse)) or lower (*e.g.*, $300,000 (or $400,000 with one's spouse)) income standard be more appropriate, and why? Would a higher (*e.g.* $3 million) or lower (*e.g.* $2 million) investments standard be more appropriate, and why? In responding to this request for comment, please also comment on any concerns you might have if any final definition that we may adopt includes an inflation adjustment provision. For example, some comment letters on the December 2006 proposal raised a concern that the proposed inflation adjustment could result in the proposed standard for accredited natural persons ultimately being higher than the existing $5 million investments-owned requirement for private investment pools that rely on Section 3(c)(7) of the Investment Company Act.[115] How would you propose to address this concern? Should we set a dollar limit above which the dollar amount of investments included in proposed Rule 216 and proposed Rule 509 may not rise (for example, should we cap the investments amount at $4.9 million), and why?

- We believe that the changes we propose to make in the definition of ''investments'' proposed today do not reflect any material change from the definition of ''investments'' proposed in the Private Pooled Investment Vehicle Release. Would adopting both definitions, with their immaterial differences, create confusion, and why? Would it create less confusion and be more appropriate to modify the definition of ''investments'' in proposed Rule 216 and proposed Rule 509 to mirror the definition we propose today?

- Would a more principles-based definition of the term ''investments,'' like the one we have suggested as an alternative to the definition we are proposing for Rule 501(h), also be appropriate in the context of proposed Rule 509 and Rule 216? Is there any reason to have a definition of ''investments'' in Rule 501(h) that is different from the definition used in proposed Rule 509 and Rule 216, and why?

- Earlier in this release, we request specific comment on the treatment of real estate as an investment, the treatment of securities that constitute a ''control interest'' in an issuer as an investment, and how investments are proposed to be valued under the definition of ''investments'' proposed in this release. We solicit comment with respect to those points in connection with the definition of the term ''investments'' as proposed for use with the term ''accredited natural person.'' Is there any reason to have a definition of the term ''investments'' under proposed Rules 216 and 509 that is different from the one proposed in this release? Please explain why or why not.

- As we have explained, we modeled the definition of ''investments'' in proposed Rule 216 and proposed Rule 509 on the definition included in Rule 2a51–1(b) under the Investment Company Act. Would a more principles-based definition of the term ''investments,'' like the one we have suggested as an alternative to the definition we are proposing for Rule 501(h), also be appropriate in the context of Rule 2a51–1, and why? Should we adopt coordinated definitions of ''investments'' for purposes of proposed Rule 501(h), proposed Rule 216, proposed Rule 509 and Rule 2a51–1, or should there be different definitions applicable to these rules, and why?

C. Proposed Revisions to General Conditions of Regulation D

Rule 502 of Regulation D sets forth conditions that are applicable to offers and sales made under Regulation D. We propose to make changes to those conditions, including shortening the amount of time issuers are required to wait to make offers and sales in order to rely on the integration safe harbor provided in Rule 502(a) and adding disqualification provisions for certain issuers seeking to rely on the exemptions in Regulation D. We also are providing guidance regarding the integration of concurrent public and private offerings.

Our Advisory Committee on Smaller Public Companies advised that the six-month safe harbor period from integration provided in Rule 502(a) ''represents an unnecessary restriction on companies that may very well be subject to changing financial circumstances, and weighs too heavily in favor of investor protection, at the expense of capital formation.'' [116] The Committee supported ''clearer guidance concerning the circumstances under which two or more apparently separate offerings will or will not be integrated.'' [117] The Advisory Committee acknowledged the difficulty, however, of modifying the five-factor test contained in Rule 502(a) and concluded that the issue could be more readily addressed through a shortening of the six-month period. Based on their analysis of the issue, the Advisory Committee recommended that we shorten the integration safe harbor from six months to 30 days.[118]

In making recommendations with respect to the integration doctrine, the Advisory Committee recommended, in addition to decreasing the time period of the integration safe harbor in Regulation D, that the Commission clarify the interpretation of or amend Securities Act Rule 152 [119] in order to permit companies to conduct a valid private placement immediately before the filing of a registration statement without concern that the two offerings would be integrated.[120] The Advisory Committee also noted in making this recommendation that, in addition to the concerns that companies may not be able to raise capital privately in the time shortly before the filing of a registration statement, there also are continuing integration considerations when conducting concurrent private placements while a registration statement is pending with the Commission.[121] This recommendation and commentary demonstrate that questions continue to arise in the capital raising process concerning the ability of issuers to conduct a private placement before a Securities Act registration statement is filed with the Commission, or in the period between the filing and effectiveness of the registration statement.

We understand that capital raising around the time of a public offering, in particular an initial public offering, often is critical if companies are to have sufficient funds to continue to operate while the public offering process is ongoing. For this reason, we are providing guidance so that companies and their counsel may have a better

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[115] See, *e.g.*, comment letters in Commission Rulemaking File No. S7-25-06 from Schulte, Roth & Zabel LLP (Mar. 9, 2007), available at *http://www.sec.gov/comments/s7-25-06/s72506-549.pdf,* and ABA Private Pooled Investment Vehicle Letter, n. 101 above.

An individual that invests in 3(c)(7) pools must be a qualified person, defined in Section 2(a)(51)(A)(1) of the Investment Company Act as an individual who owns not less than $5 million in investments. Rule 2a51–1(b) under the Investment Company Act defines investments, and is the basis for the definition we proposed in December 2006 and today.

[116] Advisory Committee Final Report at 96.

[117] *Id.* at 95.

[118] *Id.* at 94.

[119] 17 CFR 230.152. Rule 152 specifies that ''[t]he phrase 'transactions by an issuer not involving any public offering' in Section 4(2) shall be deemed to apply to transactions not involving any public offering at the time of said transaction although subsequently thereto the issuer decides to make a public offering and/or files a registration statement.''

[120] Advisory Committee Final Report at 100–101.

[121] Advisory Committee Final Report at n. 207.

framework for evaluating their particular circumstances.[122]

Consistent with Securities Act Rule 152, the staff of the Division of Corporation Finance, in its review of Securities Act registration statements, will not take the view that a completed private placement that was exempt from registration under Securities Act Section 4(2) should be integrated with a public offering of securities that is registered on a subsequently filed registration statement.[123] Consistent with the staff's approach to this issue, we are of the view that, pursuant to Securities Act Rule 152, a company's contemplation of filing a Securities Act registration statement for a public offering at the same time that it is conducting a Section 4(2)-exempt private placement would not cause the Section 4(2) exemption to be unavailable for that private placement.[124]

We recognize that a company's financing needs do not end with the filing of a registration statement. As a general matter, however, the filing of a registration statement has been viewed as a general solicitation of investors.[125] Today, upon the filing of a registration statement, information about a company and its prospects is available immediately through our EDGAR filing system. The staff of the Division of Corporation Finance has issued interpretive letters to the effect that, notwithstanding the availability of the information in the registration statement, companies may continue to conduct concurrent private placements without those offerings necessarily being integrated with the ongoing public offering.[126] Concerns remain, however, with the ability to complete such concurrent private placements in factual situations that were not considered previously by the Division staff in interpretive letters. The Division staff has not applied any *per se* approach in addressing these circumstances in its review of filings, but rather has requested a discussion of the relevant facts and in some cases an opinion of counsel when concerns arose as to the potential integration of the concurrent private offering and public offering and the availability of the Section 4(2) exemption after the filing of the registration statement.[127]

Our view is that, while there are many situations in which the filing of a registration statement could serve as a general solicitation or general advertising for a concurrent private offering, the filing of a registration statement does not, *per se,* eliminate a company's ability to conduct a concurrent private offering, whether it is commenced before or after the filing of the registration statement. Further, it is our view that the determination as to whether the filing of the registration statement should be considered to be a general solicitation or general advertising that would affect the availability of the Section 4(2) exemption for such a concurrent unregistered offering should be based on a consideration of whether the investors in the private placement were solicited by the registration statement or through some other means that would otherwise not foreclose the availability of the Section 4(2) exemption. This analysis should not focus exclusively on the nature of the investors, such as whether they are ''qualified institutional buyers'' as defined in Securities Act Rule 144A or institutional accredited investors, or the number of such investors participating in the offering; instead, companies and their counsel should analyze whether the offering is exempt under Section 4(2) on its own, including whether securities were offered and sold to the private placement investors through the means of a general solicitation in the form of the registration statement. For example, if a company files a registration statement and then seeks to offer and sell securities without registration to an investor that became interested in the purportedly private offering by means of the registration statement, then the Section 4(2) exemption would not be available for that offering. On the other hand, if the prospective private placement investor became interested in the concurrent private placement through some means other than the registration statement that did not involve a general solicitation and otherwise was consistent with Section 4(2), such as through a substantive, pre-existing relationship with the company or direct contact by the company or its agents outside of the public offering effort, then the prior filing of the registration statement generally would not impact the potential availability of the Section 4(2) exemption for that private placement and the private placement could be conducted while the registration statement for the public offering was on file with the Commission. Similarly, if the company is able to solicit interest in a concurrent private placement by contacting prospective investors who (1) Were not identified or contacted through the marketing of the public offering and (2) did not independently contact the issuer as a result of the general solicitation by means of the registration statement, then the private placement could be conducted in accordance with Section 4(2) while the registration statement for a separate public offering was pending. While these are only examples, we believe they demonstrate the framework for analyzing these issues that companies and their counsel should apply and that the staff will consider when reviewing registration statements.

1. Proposed Revisions to Regulation D Integration Safe Harbor

The integration doctrine seeks to prevent an issuer from improperly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to the multiple offerings that would not be available for the combined offering. The integration concept was first articulated in 1933 [128] and was further developed in two interpretive releases issued in the 1960s.[129] The interpretive releases clarified that determining whether a particular securities offering should be integrated with another offering requires an analysis of the specific facts and circumstances of the offerings. In our guidance, we identified five factors to

[122] This guidance does not affect the risk that the Commission or a court could find a violation of Section 5 where a company begins an offering as a private placement and seeks to complete that offering pursuant to a registration statement, or where a company commences a registered offering and seeks to complete that offering through a private placement, except in those circumstances specified in Securities Act Rule 155. See Integration of Abandoned Offerings, Release No. 33–7943 (Jan. 26, 2001) [66 FR 8887].

[123] See, *e.g.,* Division of Corporation Finance no-action letter to *Verticom, Inc.* (Feb. 12, 1986).

[124] In these circumstances, companies should be careful to avoid any pre-filing communications regarding the contemplated public offering that could render the Section 4(2) exemption unavailable for what would be an otherwise exempt private placement.

[125] See, *e.g.,* Division of Corporation Finance no-action letter to *Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System* (Mar. 16, 1984).

[126] See, *e.g.,* Division of Corporation Finance no-action letters to *Black Box Incorporated* (June 26, 1990) and *Squadron Ellenoff, Pleasant & Lehrer* (Feb. 28, 1992). The guidance in this release does not affect the ability of issuers to continue to rely on the views expressed by the Division staff in these letters.

[127] The guidance that follows applies in the context of private placements conducted under existing exemptions from registration. If we adopt proposed Rule 507 of Regulation D, we may provide additional interpretive guidance on any potential integration issues unique to that exemption. In this regard, we note that, as proposed, offers and sales exempt under Rule 507 would be subject to a ban on general solicitation except as permitted under the rule and would be considered ''limited,'' rather than ''private,'' offerings.

[128] Release No. 33–97 (Dec. 28, 1933).

[129] Release No. 33–4434 (Dec. 6, 1961) [26 FR 11896] and Release No. 33–4552 (Nov. 6, 1962) [27 FR 11316].

consider in making the determination of whether the offerings should be integrated.[130] In 1982, we included the five factors and established an integration safe harbor in Rule 502(a). We stated that the five factors relevant to the question of integration are:

''Whether (1) The different offerings are part of a single plan of financing, (2) the offerings involve issuance of the same class of security, (3) the offerings are made at or about the same time, (4) the same type of consideration is to be received, and (5) the offerings are made for the same general purpose.''[131]

Under the safe harbor, offers and sales more than six months before a Regulation D offering or more than six months after the completion of a Regulation D offering will not be considered part of the same offering. This provides issuers with a bright-line test upon which they can rely to avoid integration of multiple offerings.

In making its recommendation that the integration safe harbor be shortened, the Advisory Committee noted that smaller companies' financing needs often are unpredictable, making the six-month waiting period for use of the safe harbor problematic for issuers in need of capital. Other commenters have made similar recommendations to decrease the waiting period in the safe harbor.[132] While we recognize the burdens that the integration doctrine places on capital formation, improper reliance on exemptions from registration harms investors by depriving them of the benefits of full and fair disclosure and the civil remedies that flow from registration. Any changes that we make to the integration doctrine must continue to provide that issuers are aware of their obligation to analyze the exemptions upon which they rely and whether any offers and sales are, in reality, part of a single plan of financing.

The current six-month time frame of the safe harbor in Rule 502(a) provides a substantial time period that has worked well to clearly differentiate two similar offerings and provide time for the market to assimilate the effects of the prior offering. The Advisory Committee has expressed concern, however, that such a long delay could inhibit companies, particularly smaller companies, from meeting their capital needs.[133] We recognize that increased volatility in the capital markets and advances in information technology have changed the landscape of private offerings. We remain concerned, however, that an inappropriately short time frame could allow issuers to undertake serial Rule 506-exempt offerings each month to up to 35 non-accredited investors in reliance on the safe harbor, resulting in unregistered sales to hundreds of non-accredited investors in a year. Such sales could result in large numbers of non-accredited investors failing to receive the protections of Securities Act registration. Our proposal seeks to strike an appropriate balance between the number of non-accredited investors allowed in an offering relying on the integration safe harbor and the non-public nature of that offering. It would be an anomalous result that an issuer could make an offering to hundreds of non-accredited investors in reliance on the integration safe harbor, triggering reporting requirements under the Exchange Act, without a public offering. We propose, therefore, to lower the safe harbor time frame to 90 days rather than the 30 days recommended by the Advisory Committee.[134] We believe 90 days is appropriate, as it would permit an issuer to rely on the safe harbor once every fiscal quarter.[135] This reduction in time should provide additional flexibility to issuers, while still requiring them to wait a sufficient period of time before initiating a substantially similar offer in reliance on the safe harbor.[136]

The same integration analysis as applies to other Regulation D offerings would apply to offerings made under proposed Rule 507. Accordingly, an issuer would not be able to take advantage of the safe harbor in Rule 502(a) for any sales to investors that are not large accredited investors within the safe harbor period after the publication of a general announcement as permitted by Rule 507. The new 90-day safe harbor would apply to Rule 507 offerings, allowing issuers to make offerings without integration concerns after waiting the requisite period of time.

Request for Comment

- As proposed, we would reduce the time frame for the integration safe harbor from six months to 90 days. Is 90 days an appropriate time frame for the safe harbor? Is 90 days still too long a delay for issuers seeking capital in reliance on the integration safe harbor? Would this reduction increase the possibility that issuers will use the safe harbor and undertake serial offerings?
- Some commentators have suggested that a 30-day integration safe harbor would be appropriate. We are concerned that such a short time period could encourage serial private offerings that would otherwise be integrated and effectively allow unregistered public offerings. If we were to reduce the time period of the safe harbor, should we limit the total number of non-accredited investors to whom an issuer may sell over the course of the year? If so, how many non-accredited investors would be an appropriate limitation per year—100, 140, 210 or some other number?
- The five-factor test provides issuers with an analytical framework to differentiate offers so that they need not be integrated. Does the five-factor test provide sufficient guidance for issuers to make their analysis? If not, how could we improve the factors to provide clearer guidance? Should we provide additional factors? Would the proposed 90-day time frame obviate the need to revise the test?
- Would the interaction between the general announcement permitted by proposed Rule 507 and the proposed 90-day integration safe harbor present opportunities for abuse? Could issuers use the general announcement permitted by proposed Rule 507 to test the waters before deciding whether to undertake either a registered public offering or unregistered exempt offering under Regulation D? Should we permit this use of a Rule 507 general announcement? Should we modify proposed Rule 507 to prohibit such a practice?

2. Disqualification Provisions

In conjunction with the proposed revisions to Regulation D, we have considered the need for general ''bad actor'' disqualification provisions for all offerings under Regulation D. Our concern arises from the number of recidivists we see in problematic Regulation D offerings. Before the National Securities Markets Improvement Act of 1996,[137] recidivists

[130] Release No. 33–4552 (Nov. 6, 1962) [27 FR 11316].

[131] *Id.*

[132] See ABA Private Offering Letter, n. 24 above, at 33. The ABA letter also suggested expanding the factors to consider when making the determination of whether an offering should be integrated.

[133] See Advisory Committee Final Report at 96.

[134] Both the Advisory Committee and the ABA recommended reducing the time frame for the integration safe harbor to 30 days. Their proposals do not address our concerns that such a short time frame could result in public offerings conducted under the guise of private offerings. See ABA Private Offering Letter, n. 24 above, at 33 and Advisory Committee Final Report at 94.

[135] For issuers that provide quarterly reports, the 90-day requirement would provide time and transparency for investors and the market to take into account the offering and its results.

[136] The five-factor test would continue to apply, providing issuers with flexibility where they are making separate offerings within the 90-day time frame.

[137] Pub. L. 104–290.

were excluded from most Rule 506 offerings by state disqualification provisions. The National Securities Markets Improvement Act preempts the states from enforcing those provisions in favor of federal regulation, raising the question whether federal disqualification provisions should be adopted to replace them.

We propose that availability of all Regulation D exemptions be conditioned on the application of bad actor disqualification provisions. By deterring recidivists from participating in our primary private and limited offering marketplaces, we intend to improve the effectiveness of Regulation D offerings for a significant majority of companies, especially smaller companies, that do not have bad actors associated with their securities offerings and will not be disqualified under the proposed provisions.

Currently, in Regulation D, only Rule 505 provides disqualification provisions.[138] Rule 505 refers issuers to the substantive disqualification provisions of Rule 262 [139] under Regulation A,[140] essentially incorporating those provisions by reference. Under those provisions, issuers are barred from relying on the exemption where the issuer, any of its predecessors, any affiliated issuers, any director, officer or general partner of the issuer, any beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with the issuer, any underwriter of the securities to be offered, or any partner, director or officer of the underwriter have committed relevant violations of laws and regulations. The Model Accredited Investor Exemption [141] and the Uniform Securities Act of 2002 [142] also provide for similar disqualification provisions for these types of issuers and associated persons.

The exemption in proposed Rule 507 and the proposal to reduce the time that issuers must wait to rely on the integration safe harbor would provide issuers with greater flexibility in preparing and conducting private offerings. Given this proposed increase in flexibility, as well as enforcement issues we have confronted with recidivists involved in purported Regulation D offerings,[143] we believe it is appropriate to propose that certain issuers be precluded from relying on any of the Regulation D exemptions if they or the persons designated in proposed Rule 502(e) have violated the law. We are proposing a rule that is based generally on the provisions in Regulation A, the Model Accredited Investor Exemption and the Uniform Securities Act of 2002.[144] In the interests of coordination and uniformity, we drew extensively from the Model Accredited Investor Exemption, but have modified some of the provisions, taking into account provisions of the Uniform Securities Act. The proposed disqualification provisions all relate to determinations by regulators and courts of problematic behavior or wrongdoing. It is our intent that the Commission's adoption of disqualification provisions based on provisions in use in many states will lead to increased uniformity in federal and state securities regulation.[145]

Exempt private and limited offerings under Regulation D do not provide the protections that registration would afford. We believe that registration, with its incumbent rights for investors and duties of the issuer, is more appropriate for offerings by issuers and persons that have been subject to determinations of violations of law or wrongdoing than offerings relying on Regulation D exemptions. Thus, we believe it would be prudent to preclude certain persons who have been shown to have acted improperly from relying on Regulation D to make or be involved with unregistered offers and sales of securities.

As proposed, the disqualification provisions in new Rule 502(e) would apply to all offerings made in reliance on Regulation D, precluding reliance by the issuer on Regulation D if the issuer itself is disqualified or the presence of any of the enumerated persons disqualifies the issuer.[146] The disqualification provisions under proposed Rule 502(e) would apply to:

- The issuer, any predecessor of the issuer, and any affiliated issuer;
- Any director, executive officer, general partner, or managing member of the issuer;
- Any beneficial owner of 20 percent or more of any class of the issuer's equity securities; and
- Any promoter connected with the issuer.

The persons and entities we propose to subject to the disqualification provisions are substantially similar to those in Regulation A and the Model Accredited Investor Exemption, except that we do not propose to include underwriters.[147] Both Regulation A and the Model Accredited Investor Exemption include underwriters among the classes of persons to whom disqualification provisions apply.[148] Underwriters generally do not directly control the issuer or determine for an issuer whether to conduct an offering. In weighing the balance of adding the disqualification provisions, we determined that adding provisions throughout Regulation D would have positive effects on the private and limited offering equity markets. In order to limit the burden of expanding these provisions, we propose to limit the application, and therefore the due diligence burden, to the issuer and those persons whom we regard as having substantial influence over the issuer.[149]

[138] 17 CFR 230.505(b)(2)(iii).

[139] 17 CFR 230.262.

[140] 17 CFR 230.251 through 230.263. Regulation A is an exemption from Securities Act registration, promulgated under Section 3(b) of the Securities Act, 15 U.S.C. 77c(b), for public offerings not exceeding $5 million in any 12-month period.

[141] According to NASAA, as of 1999, 33 states plus the District of Columbia and Puerto Rico had adopted a form of this exemption and seven more states had bills pending in their legislatures. See North American Securities Administrators Association, Written Statement before the House Small Business Committee, Government Programs and Oversight Subcommittee (Oct. 14, 1999).

[142] See *http://www.uniformsecuritiesact.org.* According to the drafting committee, as of April 27, 2007, the Act had been enacted in 11 states and the U.S. Virgin Islands and is endorsed by NASAA, the Securities Industry and Financial Markets Association (formerly known as the Securities Industry Association) and the American Bar Association.

[143] See, *e.g., SEC* v. *Calvo*, 378 F.2d 1211, 1216 (11th Cir. 2004).

[144] In response to the Advisory Committee's proposed recommendations, NASAA commented that any new exemption in Regulation D should ''contain at least disqualification provisions like those contained in Rule 505(b)(2)(iii), Rule 1.B of the NASAA Uniform Limited Offering Exemption (1983), and Section D of the Model Accredited Investor Exemption.'' See NASAA Letter, n. 48 above.

[145] Several provisions of the federal securities laws call for greater uniformity in federal and state securities regulation. See, *e.g.,* Securities Act § 19(d), 15 U.S.C. 77s(d).

[146] In conjunction with this proposal, we also propose to delete the current disqualification provisions in Rule 505(b)(2)(iii).

[147] We propose to add managing members to the traditional list of directors, officers, and general partners to indicate clearly that managing members of limited liability companies are intended to be included in the provision. We also propose to limit the provisions to ''executive officers'' rather than ''officers'' and to 20 percent beneficial owners rather than 10 percent beneficial owners as provided in Rule 262 of Regulation A. We believe that limiting the scope of these provisions to executive officers and 20 percent beneficial owners would be appropriate, given their greater influence on the policies of the issuer as compared to officers and 10 percent beneficial owners.

[148] The term ''underwriters'' is used in both Regulation A and the Model Accredited Investor Exemption. The term underwriters includes selling broker-dealers, who are commonly called underwriters in Regulation A offerings and placement agents in private offerings.

[149] We have chosen not to use in this context the concept of ''affiliate,'' which we use in other rules under the Securities Act to designate certain persons with control relationships with issuers. Rule 505 of Regulation D currently refers issuers to

Continued

Proposed Rule 502(e) provides six disqualification provisions that would preclude an issuer from relying on Regulation D. Each of the disqualification provisions requires a determination by a government official or agency or self-regulatory organization that the relevant person has violated the law or engaged in other wrongdoing. These provisions apply where the issuer or the covered persons:

- Filed a registration statement within the last five years that is the subject of a currently effective permanent or temporary injunction or an administrative stop order; [150]
- Was convicted of a criminal offense in the last 10 years that was in connection with the offer, purchase or sale of a security or involved the making of a false filing with the Commission; [151]
- Has been subject to an adjudication or determination within the last five years by a federal or state regulator that the person violated federal or state securities or commodities law or a law under which a business involving investments, insurance, banking or finance is regulated; [152]
- Is subject to an order, judgment or decree by a court entered within the last five years that restrains or enjoins the issuer or a person from engaging in any conduct or practice involving securities and other similar businesses, including an order for failure to comply with Rule 503 (the filing of Form D); [153]
- Is subject to a cease and desist order entered within the last five years issued under federal or state securities or similar laws; [154] or
- Is subject to a suspension or expulsion from membership in or association with a member of a national securities exchange or national securities association for an act or omission constituting conduct inconsistent with just and equitable principles of trade.[155]

The length of disqualification from reliance on Regulation D in the proposal is generally five years. For more egregious conduct resulting in a criminal conviction, we propose disqualification for 10 years.[156] We believe that these disqualification provisions would provide a deterrent effect, as well as offer protection to investors from recidivists who have violated securities and related laws and rules in the past.

Proposed subparagraphs (i), (iii), (iv), and (v) of Rule 502(e)(1) enumerate the various administrative and civil orders, judgments, and determinations that would trigger disqualification for an issuer. Proposed subparagraph (ii) provides a similar disqualification provision for criminal convictions, and proposed subparagraph (vi) provides a disqualification provision that relates to decisions of self-regulatory organizations. Each disqualification provision relates to a failure to comply with laws or regulations, raising concerns that the person may continue to disregard laws and regulations relating to the offering of securities. For this reason, we believe an issuer should not be allowed to rely on Regulation D if the issuer or one of the covered persons meets the disqualification provisions in proposed Rule 502(e).

In order to combine all of the disqualification provisions in the same rule, we propose to remove the disqualification provision relating to failure to comply with Rule 503 (the filing of Form D) that is found in current Rule 507 and replace the substance of that provision with a clause in proposed Rule 502(e)(1)(iv). Proposed Rule 502(e)(1)(iv) would specifically indicate that an order for failure to comply with Rule 503 of Regulation D would trigger the disqualification provision. Proposed Rule 502(e)(2) would expand upon the concept in current Rule 507 and allow the Commission, upon a showing of good cause, to waive any of the enumerated disqualification provisions in proposed Rule 502(e)(1).[157] Proposed Rule 502(e)(2) also would provide a safe harbor for an offering by an issuer, if that issuer establishes that it did not know and reasonably could not have known that the disqualification existed.[158]

Request for Comment

- Should we limit the disqualification provisions to Rule 505 exemptions only, as is currently the case, rather than applying these provisions to all Regulation D exemptions? Are there any

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the disqualification provisions of Rule 262 of Regulation A. Under the proposed disqualification provisions, Rule 505 would refer to Rule 502(e) and not to the disqualification provisions in Regulation A.

[150] Rule 262(a)(1) provides that the issuer, any of its predecessors or any affiliated issuer ''has filed a registration statement which is the subject of any pending proceeding or examination under Section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within five years prior to the filing of the offering statement required by Rule 252.'' As proposed, the provision would not be limited to the issuer and the language of the provision would apply more generally to court injunctions and stop orders or similar orders by the Commission or state securities agencies. The proposed language tracks Section 306(a)(3) of the Uniform Securities Act.

[151] Rule 262 provides disqualification provisions for ''any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.'' Under Rule 262, the disqualification of issuers, predecessors and affiliated issuers is for five years, while for any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter the disqualification is for 10 years. The proposed provision tracks Rule 262 instead of the Model Accredited Investor Exemption or Uniform Securities Act, because the language focuses on securities-related offenses while the other models use broader language. The proposal uses the term ''criminal offense'' instead of specifying ''felony or misdemeanor'' as used in Rule 262 and uniformly applies a 10-year disqualification for these more egregious acts. This provision would substantially cover situations addressed in Rule 262(a)(3) and Rule 262(b)(3).

[152] This provision is based on Section 412(d)(6) of the Uniform Securities Act, but more generally includes ''federal or state regulator'' and ''federal or state securities or commodities laws or a law under which a business involving investments, insurance, banking, or finance is regulated'' instead of providing a specific list of relevant statutes. The Model Accredited Investor Exemption contains a similar, but more limited provision that disqualifies a person if they are ''currently subject to any state or federal administrative enforcement order or judgment * * * finding fraud or deceit in connection with the purchase or sale of any security.''

[153] We sought to simplify the provisions in Rule 262(a)(2) and (b)(2) of Regulation A by following the Model Accredited Investor Exemption provision (D)(1)(d). Rather than refer to ''involving fraud or deceit in connection with the purchase or sale of any security,'' we broadened the application to a business ''involving securities, commodities, investments, insurance, banking, or finance'' as suggested by the Uniform Securities Act. We did not, however, include a business involving franchises as in the Uniform Securities Act list. We also added a specific reference to Rule 503, which is being moved from current Rule 507, as discussed below.

[154] This provision, while similar to the provisions in Rule 502(e)(1)(iii) and (iv), is based on Section 412(12) of the Uniform Securities Act.

[155] This provision is substantially similar to Rule 262(b)(4) and seeks to bar similar persons to those covered by Uniform Securities Act Section 412(13).

[156] The period of disqualification generally follows the periods provided in Regulation A. The disqualification period for issuers convicted of a criminal offense would be increased from five to 10 years to conform with the disqualification for other criminal offenders and to better conform with the Uniform Securities Act.

[157] The waiver provision tracks the preliminary language in Rule 262 and provides flexibility for the Commission. The Commission staff has, and would continue to have, delegated authority to act on waiver requests under Rule 262 of Regulation A and Rule 505, and we are proposing a similar delegation for all other Regulation D disqualification waiver requests. See II.E.3 below.

[158] The Model Accredited Investor Exemption provides exemptions from disqualification where a waiver is provided or where the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known of the disqualification. Regulation A does not include the exemption where an issuer reasonably could not have known. Due to the broad application of the proposed Rule, we have proposed similar exemptions to those in the Model Accredited Investor Exemption providing for waiver and for an issuer that reasonably could not have known. We have not included the requirement for a factual inquiry to establish the reasonable basis as in the Model Accredited Investor Exemption.

current disqualifications not included in the proposed rule that we should include? Are any persons not covered who should be?

• What would be the effects on disqualified issuers? How many issuers would be affected?

• Unlike the Regulation A, Regulation E [159] and current Rule 505 disqualification provisions, proposed Rule 502(e) excludes selling broker-dealers, underwriters, and placement agents from the disqualification provisions. Should selling broker-dealers, underwriters, and placement agents be covered in the disqualification provisions? Would including selling broker-dealers, underwriters, and placement agents give issuers an incentive to check their backgrounds before engaging them for an offering? If they were included, should there be an exemption for persons who continue to be licensed or registered to conduct securities related business in the jurisdiction where the order, judgment, or decree creating the disqualification was entered, as is the case in the Model Accredited Investor Exemption?

• Does the proposed rule adequately cover the disqualification provisions of Regulation A, which currently apply to Rule 505? For example, proposed Rule 502(e)(1)(iii) would disqualify persons subject to an adjudication or determination by a federal or state regulator that the person violated securities or commodities laws or a law under which a business involving investments, insurance, banking, or finance is regulated. Under Rule 262(a)(5), a United States Postal Service false representation order and certain other orders and injunctions are specifically enumerated. Does the proposed rule adequately cover these and other related orders and injunctions? If not, should we revise the proposed rule to specifically cover United States Postal Service orders and injunctions or other specific circumstances?

• Should the disqualification provisions for being currently subject to an order, judgment, decree, or cease and desist order apply as long as the person is subject to the order, no matter when the order was entered into, or should the provisions apply only to orders entered into within the last five years, as proposed?

• The length of disqualification in the proposed rules generally is consistent with our current Rule 262 provisions in Regulation A. The proposal increases the length of disqualification for criminally convicted issuers from 5 years to 10 years. Under the Uniform Securities Act of 2002, a person convicted of a felony involving the business of securities is permanently barred from relying on the exemption. Should such felony convictions permanently disqualify a person? Is 10 years an appropriate disqualification period? Is 5 years an appropriate length of time to protect investors adequately from persons who have been determined to have violated or have been sanctioned for violations of securities-related and similar laws and regulations?

• How should the Commission phase in the new disqualification provisions, if adopted? Should we ''grandfather'' individuals and entities from the consequences of the new disqualification provisions if an issuer commences an offering before the effectiveness of proposed Rule 502(e)? With respect to offerings commenced before the effectiveness of proposed Rule 502(e), should we subject individuals and entities that become newly associated with the issuer after effectiveness to all the consequences of the new disqualification provisions? In these cases, should we provide any special waiver provisions and/or condition any waiver on providing disclosure in the offering document regarding any past disqualifying events?

• Would mandatory disclosure of the adverse orders, judgments, and determinations be an adequate substitute for disqualification? [160] If so, how should disclosure be mandated and enforced?

• The proposed rule provides an exemption from the disqualification provisions if, in the exercise of reasonable care, the issuer could not have known that a disqualification existed. Is this appropriate? If so, should an issuer be required to establish that reasonable care was based on a factual inquiry, as required in the Model Accredited Investor Exemption? Are there circumstances where no factual inquiry would be necessary? Would the requirement for a factual inquiry be burdensome?

• Should we revise the disqualification provisions in Regulation A and Regulation E to conform with proposed Rule 502(e)? What changes specific to Regulation A or Regulation E should we make to the proposed disqualification provisions?

D. Possible Revisions to Rule 504

Rule 504 of Regulation D is known as the ''seed capital'' exemption. It is limited to offerings by non-reporting companies that do not exceed an aggregate annual amount of $1 million. Rule 504 places substantial reliance upon state securities laws, because the size and local nature of these offerings has not appeared to warrant imposing significant federal regulation.

Rule 504 sets forth the requirements for four separate exemptions from the registration requirements of the Securities Act. Among these is Rule 504(b)(1)(iii),[161] which provides an exemption from registration for offers and sales of securities that are conducted ''according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to 'accredited investors' as defined in [Rule 501(a)].'' [162] Securities sold without registration in reliance on this provision are not subject to the limitations on resale established in Rule 502(d) and, as such, are not ''restricted securities'' for purposes of Rule 144(a)(3)(ii).

We added Rule 504(b)(1)(iii) as a new exemption to Rule 504 in 1999.[163] It was an attempt to apply the appropriate federal securities law treatment to offerings made under state registration exemptions that satisfied its conditions. As an example of these exemptions, we cited the Model Accredited Investor

[159] 17 CFR 230.601 through 230.610a. Regulation E is an exemption from Securities Act registration, promulgated under Section 3(c) of the Securities Act, 15 U.S.C. 77c(c), for securities of small business investment companies.

[160] We recently proposed changes to Form D, the form required of issuers relying on Regulation D, that would include requiring each issuer submitting the form to certify that it is not disqualified from relying on Regulation D for one of the reasons stated in proposed Rule 502(e). See Release No. 33–8814 (June 29, 2007) [72 FR 37376].

[161] 17 CFR 230.504(b)(1)(iii).

[162] Rule 501(a) has been discussed at length at various places above. The other three Rule 504 exemptions, which would not be affected by the possible revisions we are discussing here, are contained in:

(a) The introductory clause of Rule 504(b)(1), 17 CFR 230.504(b)(1) (exemption for offers and sales of restricted securities that do not involve general solicitation and advertising); and

(b) Rules 504(b)(1)(i) and 504(b)(1)(ii), 17 CFR 230.504(b)(1)(i) and 230.504(b)(1)(ii) (exemptions for offers and sales of unrestricted securities that may involve general solicitation and advertising if the offering is registered under appropriate state securities laws that require the public filing and delivery of a disclosure document to investors before sale).

In a companion release, we have proposed to amend Form D, the notice that must be filed with us when an issuer sells securities in a Regulation D offering, to require issuers relying on Rule 504 to specify the precise Rule 504 exemption on which they are relying. See Release No. 33–8814 (June 29, 2007) [72 FR 37376]. One of the purposes of this change is to provide us with better information on the extent of use of the different types of Rule 504 offerings.

[163] See Release No. 33–7644 (Feb. 25, 1999) [64 FR 11090]. Previously, securities sold under Rule 504 were not deemed restricted securities.

Exemption, which was a model exemption developed in 1997 by the North American Securities Administrators Association.[164] It was our understanding at the time that securities issued under Rule 504(b)(1)(iii) generally could not be transferred under state law, and that immediate resale generally would not be possible.[165]

The addition of Rule 504(b)(1)(iii) in 1999 was part of a series of changes designed to deter abusive practices in Rule 504 offerings while not impeding legitimate ''seed capital'' offerings. The Commission had been concerned for some time with abusive practices in Rule 504 offerings, many of which involved ''pump and dump'' schemes for securities of non-reporting companies that traded over the counter. At the time, we stated that we would monitor the use of Rule 504 as revised and contact state securities regulators regarding their experience with these offerings. We further stated that if abusive practices involving Rule 504 continued, we would consider stronger measures in the future.[166]

In recent years, the Commission has taken enforcement action against numerous ''pump and dump'' schemes, most of which involve the securities of small companies without large market capitalization or significant market following.[167] Several of these cases have involved claims of purported compliance with Rule 504(b)(1)(iii) and state securities laws that are submitted to transfer agents as the basis for the issuance of securities without restrictive legends to permit immediate resale. In informal discussions, state securities regulators also have raised concerns about abusive practices involving Rule 504(b)(1)(iii) offerings. These factors lead us to question whether we should amend Rule 504(b)(1) to provide that the limitations on resale set forth in Rule 502(d) would apply to securities sold in a Rule 504(b)(1)(iii) transaction. Such an amendment would result in those securities being ''restricted securities'' for purposes of Rule 144.

In a companion release, we have proposed to amend Rule 144 to provide that non-affiliates receiving restricted securities of non-reporting companies would be eligible to resell those securities after 12 months without any restrictions.[168] A 12-month holding period would be consistent with the Model Accredited Investor Exemption. If we adopt the Rule 144 proposal and revise Rule 504(b)(1) to provide that securities sold in a Rule 504(b)(1)(iii) transaction are ''restricted securities,'' the resale restrictions will be less stringent than under current Rule 144.[169]

Request for Comment

- The Commission seeks comment as to whether Regulation D should be amended so that securities sold in reliance on Rule 504(b)(1)(iii) pursuant to a state law exemption that permits sales only to accredited investors would be subject to the limitations on resale in Rule 502(d) and, as such, be deemed ''restricted securities'' for purposes of Rule 144.[170]
- If Regulation D were amended to make securities issued under Rule 504(b)(1)(iii) ''restricted securities,'' would the amendment impose a significant burden on start-up and other smaller companies? If you believe so, please explain your reasons, given the resale restrictions typically required under state securities law exemptions. Do any states have resale restrictions that are narrower than would apply to ''restricted securities''?

E. Other Proposed Conforming Revisions

1. Proposed Amendments to Rule 215

We propose to amend Rule 215 to conform the definition of ''accredited investor'' in Rule 215 with the definition in Rule 501(a) of Regulation D. Rule 215 defines accredited investor under Section 2(a)(15) of the Securities Act[171] for purposes of Section 4(6) of the Securities Act and would track the proposed definition in Rule 501(a) of Regulation D.

2. Proposed Amendment to Rule 144A

Rule 144A currently provides a safe harbor under Section 5 of the Securities Act for offers and resales of securities to a qualified institutional buyer or to an offeree or purchaser that the seller and any person acting on the seller's behalf reasonably believe is a qualified institutional buyer. A general announcement of an offering published by an issuer in accordance with Rule 507 may be deemed inconsistent with the requirement under Rule 144A that offers be made solely to such persons. As a result, we propose to add a Preliminary Note 8 to Rule 144A to clarify that publication of a general announcement of an offering in accordance with Rule 507 would not preclude resales pursuant to Rule 144A.

Request for Comment

- As proposed, Preliminary Note 8 to Rule 144A would not make any distinctions based on the type of security that is being offered pursuant to Rule 507. Should the Preliminary Note only apply to debt securities, as opposed to equity, because debt securities are more likely to be sold to institutional investors?

3. Delegated Authority

Under Rule 30–1,[172] the Commission has delegated to the Director of the Division of Corporation Finance the authority to grant applications for exemptions to the disqualification provisions under Regulation A and Rule 505. As we are proposing to include disqualification provisions for all Regulation D offerings, we propose to revise Rule 30–1(c) to delegate authority to the Director of the Division of Corporation Finance to grant applications for exemptions to the disqualification provisions of Regulation D.

III. General Request for Comment

The Commission is proposing these revisions. We welcome your comments. We solicit comment, both specific and general, on each component of the proposals. We request and encourage any interested person to submit comments regarding:

- The proposals that are the subject of this release;

[164] *Id.* A copy of the Model Accredited Investor Exemption is available on the NASAA Web site at *http://www.nasaa.org/content/Files/Model%5FAccredited%5FInvestor%5FExemption.pdf.*

[165] See Release No. 33–7644, n. 38.

[166] *Id.* Other suggested measures included the expansion of disqualification provisions similar to those in Rule 505(b)(2)(iii) and Rule 262. We propose to expand such disqualification provisions to all Regulation D offerings in this release. See II.C.2 above.

[167] See, *e.g., SEC* v. *Integrated Services Group Inc.*, Lit. Release No. 19476 (Nov. 29, 2005) (reporting complaint filed in S.D. Tex.); *SEC* v. *Custom Designed Compressor Systems, Inc.*, Lit. Release No. 19101 (Feb. 28, 2005) (reporting complaint filed in D. N.M.).

[168] See Release No. 33–8813 (June 22, 2007) [72 FR 36822].

[169] For resales of securities by non-affiliates of the issuer, current Rule 144 requires a one-year holding period followed by an additional year when resales are subject to manner of sale restrictions, volume limitations, current public information requirements, and notice requirements. Unlimited resales may occur after the second year.

[170] We envision that any such amendment would not affect the resale status of securities sold under the exemptions in Rules 504(b)(1)(i) and 504(b)(1)(ii), which exempt certain offerings of securities that are registered under a state securities law that requires the public filing and delivery of a disclosure document to investors before sale. As such, the resale limitations of Rule 502(d) would continue not to apply to securities sold in transactions that are exempted by those rules and those securities would not be ''restricted securities'' for purposes of Rule 144.

[171] 15 U.S.C. 77b(a)(15).

[172] 17 CFR 200.30–1(b)(1), 200.30–1(c).

• Additional or different revisions to Regulation D; and

• Other matters that may have an effect on the proposals contained in this release.

In December 2006, the Commission proposed to add a new category of accredited investor, defined as accredited natural person, under the Securities Act.[173] We are taking the opportunity to solicit further comment on the questions we asked in connection with that proposal, especially in light of the new proposals in this release. Are there any differences in the regulation of operating and private pooled investment vehicles that we should consider in crafting harmonious rules for limited offerings? Finally, we solicit comment on whether any additional conforming amendments are necessary.

Comment is solicited from the point of view of both issuers and investors, as well as of capital formation facilitators, such as broker-dealers, and other regulatory bodies, such as state securities regulators. Any interested person wishing to submit written comments on any aspect of the proposal is requested to do so.

IV. Paperwork Reduction Act

The proposals contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[174] The title of these requirements is:

• ''Form D'' (OMB Control No. 3235–0076).[175]

We adopted Regulation D and Form D as part of the establishment of a series of exemptions for offerings and sales of securities under the Securities Act.[176] We are submitting these requirements to the Office of Management and Budget (''OMB'') for review and approval in accordance with the Paperwork Reduction Act and its implementing regulations.[177]

We propose to make changes in four principal areas involving Regulation D, as well as to make other conforming changes, relating to:

• Creating a new exemption from the registration provisions of the Securities Act for offers and sales of covered securities to ''large accredited investors'';

• Revising the definition of the term ''accredited investor'' to clarify it and reflect developments since its adoption;

• Shortening the timing required by the integration safe harbor for Regulation D offerings; and

• Providing uniform disqualification provisions to apply throughout Regulation D.[178]

We also are soliciting comment on whether to amend Rule 504 of Regulation D so that securities sold pursuant to a state law exemption that permits sales only to accredited investors would be deemed ''restricted securities'' for purposes of Rule 144.

The information collection requirements related to the filing with the Commission of Form D are mandatory to the extent that an issuer elects to make an offering of securities in reliance on the relevant exemption. Responses are not confidential. The hours and costs associated with preparing and filing forms and retaining records constitute reporting and cost burdens imposed by the collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

A. Summary of Information Collections

Form D contains collection of information requirements, requiring an issuer to file a notice of sale of securities pursuant to Regulation D or Section 4(6) of the Securities Act. The Form D is required to include basic information about the type of filing, the issuer, certain related persons, and the offering. Form D is filed by issuers as a notice of sales without registration under the Securities Act based on a claim of exemption under Regulation D or Section 4(6) of the Securities Act. The information is needed for implementing the exemptions and monitoring their use.

We propose to amend Form D to add a check box to indicate an offering relying on the proposed Rule 507 exemption. We do not believe the proposed change will have any effect on the paperwork burden of the form. However, we believe the overall effect of the proposals will be to increase the number of forms that are filed with the Commission. While we anticipate an increase in the number of filings, we believe that most issuers that are seeking capital in the private equity markets would do so even without the proposed amendments. We believe the following proposals are likely to increase the number of exempt offerings and therefore the number of forms filed:

• The proposal to create a new exemption from the registration provisions of the Securities Act for offers and sales to large accredited investors permitting limited advertising, providing issuers a new option for offering securities;

• The proposals to clarify the definition of accredited investor will slightly increase the pool of accredited investors and, due to the increased pool of investors, is likely to marginally increase the number of offerings to those investors; [179] and

• The proposal to shorten the timing of the integration safe harbor will allow issuers to conduct more frequent offerings using the safe harbor.[180]

On the other hand, some of our proposals are likely to decrease the number of exempt offerings and therefore the number of forms filed:

• The proposal to revise the disqualification provisions applicable to Rule 505 and apply those provisions to all offerings relying on Regulation D may have the effect of reducing the number of forms filed.[181]

• The proposal to require for the determination of accredited investors status that an individual may count only 50 percent of any joint investments with their spouse unless both persons sign the investment documentation may reduce the pool of accredited investors where spouses decide not to invest together.

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[173] See Private Pooled Investment Vehicle Release.

[174] 44 U.S.C. 3501 *et seq.*

[175] Form D was adopted pursuant to Sections 2(a)(15), 3(b), 4(2), 19(a) and 19(c)(3) of the Securities Act (15 U.S.C. 77b(15), 77c(b), 77d(2), 77s(a) and 77s(c)(3)).

[176] In a companion release, Release No. 33–8814, we are proposing changes to Form D that would require that Form D be filed electronically. If Form D is required to be filed electronically, filers will be required to file Form ID in order to be able to file electronically. If the proposal to require electronic Form D is adopted, any increase in the number of companies filing Form D will result in an increase in the number of Form ID filings.

[177] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[178] Currently under Regulation D, only Rule 505 offerings are subject to disqualification provisions. The proposal would subject issuers making any offering in reliance on Regulation D to similar disqualification provisions.

[179] We propose to add an ''investments-owned'' standard to the current standards under accredited investor. We anticipate that will increase the pool of accredited investors from 8.47 percent of U.S. households to 8.69 percent of U.S. households. See n. 90. Most of the additional clarification supports current staff positions on who may qualify as an accredited investor and should not significantly affect the size of the investor pool, though it may increase awareness among those groups of their ability to qualify.

[180] We anticipate the reduction in the safe harbor waiting period will increase the number of Forms D filed, but do not believe it will increase the number of Forms ID filed, as any increase in Forms D will be from repeat filers.

[181] We believe that very few issuers will be subject to the disqualification provisions and expect the number of Forms D filed will be minimally affected. We believe the revisions are necessary in order to exclude a small number of recidivists who have been found by regulators and courts to have violated applicable laws and regulations.

• To the extent that an amendment to revise Rule 504 to treat securities sold pursuant to a state law exemption that permits sales only to accredited investors as ''restricted securities'' for purposes of Rule 144 may result in potentially greater limitation on resale than may exist under state securities laws, this could have the effect of slightly reducing the number of forms filed.

B. Paperwork Reduction Act Burden Estimates

According to our Office of Filings and Information Services, in 2006, 16,829 companies made 25,329 Form D filings. The annual number of Form D filings rose from 17,390 in 2002 to 25,239 in 2006 for an average increase of approximately 2,000 Form D filings per year. Assuming the number of Form D filings continues to increase by 2,000 filings per year for each of the next three years, the average number of Form D filings in each of the next three years would be about 29,300.[182]

As described above, we estimate that our proposals, if adopted, would have mixed effects on the number of Forms D filed with the Commission. Use of the new exemption, the shortened delay for the Regulation D safe harbor, and the slight increase in the pool of accredited investors due to the revised accredited investor definition likely would raise the number of Forms D filed. The utility of the established exemptions, particularly Rule 506, makes large numbers of Regulation D-exempt offerings that otherwise would not have been filed unlikely. In addition, the new disqualification provisions, some aspects of the revised definition of accredited investor, and the possible revisions to Rule 504 may slightly lower the number of filings.

We estimate that if the proposed rules are adopted, the burden for responding to the collection of information in Form D would not increase for most companies because the information required in the form would not change. Balancing the increasing and decreasing effects of the proposals, for purposes of the Paperwork Reduction Act, we estimate an annual increase in the number of Form D filings of five percent, or approximately 1,500 filings.[183]

For purposes of the Paperwork Reduction Act, we estimate that, over a three-year period, the average burden estimate will be four hours per Form D. This burden is reflected as a one-hour burden of preparation on the company and a cost of $1,200 per filing. Our burden estimates represent the average burden for all issuers. We expect that the burden and costs could be greater for larger issuers and lower for smaller issuers. For Form D notices, we estimate that 25 percent of the burden of preparation is carried by the company internally and that 75 percent of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[184] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. We estimate the proposals will incrementally increase the number of Form D filings and therefore the filing burden by 1,500 hours of company personnel time and $1,800,000. Based on this increase, we estimate that the annual compliance burden in the proposed collection of information requirements in hours for issuers making Form D filings will be an aggregate 30,800 hours of company personnel time and $36,960,000 for the services of outside professionals per year.

We request comment on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. [S7–18–07]. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. [S7–18–07], and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

C. Paperwork Reduction Act—Accredited Natural Person

In December 2006, the Commission proposed to add a new category of accredited investor, defined as accredited natural person, under the Securities Act.[185] We do not believe that the additional questions regarding that proposal on which we solicit comment in this release change our analysis under the Paperwork Reduction Act provided in the Private Pooled Investment Vehicle Release. We solicit comment on that conclusion and on whether our estimates continue to be accurate.

V. Cost-Benefit Analysis

A. Background and Summary of Proposals

Adopted in 1982, Regulation D was designed as a comprehensive scheme for exemptions from the registration provisions of the Securities Act for smaller companies attempting to sell securities in private or limited offerings. We are proposing revisions to Regulation D in order to clarify certain rules and definitions and to add a new exemption. The proposed changes include:

• Providing issuers a more flexible exemption in proposed Rule 507 that would allow limited advertising in offerings of covered securities made exclusively to large accredited investors,

[182] Our current OMB information collection estimate indicates that we expect 17,480 Form D filings per year. In conjunction with the Private Pooled Investment Vehicle Release, OMB revised the Form D information collection estimates to reflect an expected decrease in responses from 17,500 Form D filings to 17,480. However, based on the new data, we are increasing our estimated number of Form D filings.

[183] To arrive at this estimate, we multiplied the number of Form D filings estimated per year (29,300) by 5 percent and rounded up to the nearest 100.

[184] The hourly cost estimate is based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission.

[185] See Private Pooled Investment Vehicle Release.

a new category of investor proposed in Rule 501(a);

• Revising the definition of the term ''accredited investor'' to clarify it and reflect developments since its adoption, including adding alternative investments-owned standards to the definition, accounting for future inflation, clarifying the list of legal entities that may qualify as accredited investors and clarifying the meaning of ''joint investments'';

• Shortening the timing required by the integration safe harbor for Regulation D offerings from six months to 90 days; and

• Providing uniform disqualification provisions to apply throughout Regulation D.

We also are soliciting comment on whether to amend Rule 504 of Regulation D so that securities sold pursuant to a State law exemption that permits sales only to accredited investors would be deemed ''restricted securities'' for purposes of Rule 144.

We have identified certain costs and benefits that may result from the proposals. We encourage commenters to identify, discuss, analyze and supply relevant data regarding these or any additional costs and benefits.

B. Benefits

We believe the proposals will benefit investors by providing a new offering exemption to issuers, clarifying our existing rules and barring certain recidivists from offering securities in Regulation D exempt offerings. The benefits discussed are difficult to quantify and value. Generally, we believe the proposals will reduce the cost of Regulation D exempt offerings and thereby encourage issuers to substitute this form of offering for more costly alternatives, thereby lowering the cost of capital generally. The benefits of the proposals may include the following:

• Proposed Rule 507 would allow for limited advertising in offerings made exclusively to large accredited investors. Permitting limited advertising in an exempt offering would provide issuers more efficient access to the pool of potential investors and capital. This may reduce the cost of capital formation by allowing issuers to contact investors directly, and avoid the need for financial intermediaries to provide unnecessary costly assistance in the effort to raise capital. Finally, offerings of covered securities are preempted from state registration requirements permitting issuers to more readily offer their securities nationally.

• The proposal to revise the definition of accredited investor would add alternative investments-owned standards to the current accredited investor standards. We believe an investments-owned standard is both easier to establish and a more accurate indicator of whether an investor needs the protections afforded by registration, providing issuers a potentially better way of identifying accredited investors.[186] We believe the proposed standards would decrease the cost of establishing accredited investor qualification and slightly expand the number of accredited investors, thereby increasing the pool of potential investors and thus potentially benefiting investors by decreasing the cost of capital.

• The proposal would revise the accredited investor thresholds to account for future inflation, to clarify the meaning of ''joint investments'' and to clarify the list of legal entities that may qualify as accredited investors. Greater clarity in the rule would generally benefit investors by making the rule easier to apply and easing regulatory burdens on issuers.

• The proposal to shorten the Regulation D integration safe harbor from six months to 90 days would provide issuers greater flexibility to conduct more frequent offerings to meet unpredictable financing needs. Greater flexibility would allow issuers to better time their offerings, benefiting investors by potentially lowering the cost of capital.

• The proposal to establish uniform bad actor disqualification provisions to apply throughout Regulation D would preclude certain issuers from relying on Regulation D exemptions. We believe these disqualification provisions will help to keep recidivists out of the limited and private offering market. By deterring bad actors from conducting exempt offerings under Regulation D, we believe we may reduce fraud in the market, thereby ultimately lowering the cost of capital.

• An amendment to revise Rule 504 to treat securities sold pursuant to a state law exemption that permits sales only to accredited investors as ''restricted securities'' for purposes of Rule 144 would likely have a deterrent affect on abusive practices, such as ''pump and dump'' schemes for securities of non-reporting companies that trade over the counter.

[186] If the criteria to determine accredited investor status are easier to apply, the cost of determining accredited investor status and the risk of sales to non-accredited investors would decrease. This would also lower the risk that the issuer may need to make a rescission offer or that an investor may inappropriately invest in an offering.

C. Costs

Our proposals may impose some costs on investors by placing additional regulatory burdens on issuers. We have estimated for our Paperwork Reduction Act analysis that the proposals will increase the number of Form D filings by 1,500, resulting in $2,062,500 in additional costs relating to the filing of additional Forms D.[187] Many of the costs are dependent on a number of factors, but may include:

• Proposed Rule 507 would allow limited advertising in an exempt offering to large accredited investors. If the proposed rule is successful, issuers may substitute Rule 507 offerings for registered offerings, resulting in investors losing some of the informational and enforcement benefits of federal securities registration. Investors in the covered securities to be offered under Rule 507 in lieu of registered offerings also may incur costs due to the lost benefits of state registration and oversight.

• We expect that the majority of Rule 507 offerings would be undertaken by issuers in lieu of Rule 506 offerings, since all large accredited investors eligible to participate in Rule 507 offerings also would be eligible to participate in Rule 506 offerings. We believe the informational, enforcement and state registration and oversight benefits of Rule 507 would be the same as those of Rule 506, with no difference in costs to investors.

• Proposed Rule 507 may also cause certain issuers to undertake an offering of securities that they otherwise may not have undertaken in the absence of the new rule. The costs to conduct a Rule 507 offering, including attorney and accountant fees, as well as the costs related to limited advertising permissible in Rule 507 offerings, would be in lieu of the costs of other traditional financing methods, such as bank loans or the costs of not raising additional capital.

• If there is an increase in fraudulent activity through the limited advertising and solicitation allowed under proposed Rule 507, such activity could discourage the use of the exemption and other Regulation D exemptions generally, and thereby have the unintended consequences of increasing the cost of capital formation above what would occur in the absence of the rule amendment.

[187] We estimate that the burden of preparation for the 1,500 additional Form D filings carried by outside professionals will cost $1,800,000 and an additional 1,500 hours of company personnel time which we estimate to be valued at $175 per hour.

• The proposal to account for future inflation in the definition of accredited investor would limit the growth and could shrink the pool of accredited investors, imposing costs on investors by increasing issuers' cost of capital relative to what would occur in the absence of the rule amendment.

• The proposal to establish uniform disqualification provisions to apply throughout Regulation D may disqualify certain issuers from undertaking Regulation D exempt offerings relative to what would occur without the rule amendment. The application of the proposed disqualification provisions would add an additional cost to offerings for investigations in order to determine whether any of the participants in the offering will cause the issuer to be disqualified.[188] In addition, a disqualified issuer would not have access to Regulation D, which would likely impose costs on investors by increasing the cost of raising capital for the issuer.

• An amendment to revise Rule 504 to treat securities sold pursuant to a state law exemption that permits sales only to accredited investors as ''restricted securities'' for purposes of Rule 144 could result in potentially greater limitations on resale than may exist under state securities laws.

D. Request for Comment

We solicit comments on the costs and benefits of the proposed revisions. We request your views on the costs and benefits described above, as well as on any other costs and benefits that could result from the adoption of these proposals. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits. Specifically, we ask the following:

• What are the costs and benefits of limited advertising and greater flexibility in the proposed Rule 507 exemption?

• What are the nature and extent of the costs and benefits to investors that would result from amending the accredited investor standards as proposed? Are there costs to accredited investors relating to the application of the investments-owned standard?

• What are the costs and benefits of the shortened 90-day integration safe harbor?

• What are the costs and benefits of the disqualification provisions we propose for Regulation D?

• What would be the costs and benefits if we revised Rule 504 to treat securities sold pursuant to a state law exemption that permits sales only to accredited investors as ''restricted securities'' for purposes of Rule 144?

In general, we request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of the proposals not already defined, that may result from the adoption of these proposed amendments and rules. We generally request comment on the competitive benefits or anticompetitive effects that may impact any market participants if the proposals are adopted as proposed. We also request comment on what impact the proposals, if adopted, would have on efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

E. Accredited Natural Person

In December 2006, the Commission proposed to add a new category of accredited investor, defined as accredited natural person, under the Securities Act.[189] We do not believe that the additional questions regarding that proposal on which we solicit comment in this release change the cost-benefit analysis we provided in connection with that proposal. We solicit comment on that conclusion. For example, would changing the thresholds on who can invest materially affect investors in or issuers of pooled investment vehicles? We also welcome further comments on all aspects of that analysis.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

A. General

Section 2(b) of the Securities Act[190] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposals are intended to modernize and streamline Regulation D without compromising investor protection.

We do not believe most of the proposals will place a significant burden on or otherwise affect competition. The proposed Rule 507 exemption, the revisions to the definition of accredited investor and the Regulation D safe harbor would apply equally to all issuers and should encourage additional Regulation D offerings. The limited advertising permitted in the proposed Rule 507 exemption may provide issuers with a competitive alternative to using finders and private placement agents to locate prospective investors in exempt offerings. This may help to reduce an issuer's costs of raising capital. The proposed disqualification provisions may provide a competitive disadvantage for issuers subject to them, as such issuers would be required to take appropriate actions to no longer be subject to the disqualification, seek a waiver or raise capital through a registered offering rather than use Regulation D. We believe any disadvantage would be tempered by an issuer's ability to avoid disqualification by dissociating from the disqualified person or seeking a waiver.

We believe our proposals may positively affect efficiency and capital formation. The proposals to provide a new exemption that allows limited advertising in offerings made exclusively to large accredited investors and to shorten the time frame of the Regulation D integration safe harbor should both promote more efficient allocation of resources and increase capital formation, by allowing issuers greater flexibility in their choice of the method and timing of their offerings. We believe the proposals to add alternative investments-owned standards and to clarify the definition of accredited investors would promote efficiency by providing clearer guidance on the application of the accredited investor standard. The proposal to account for future inflation may reduce the number of accredited investors and add complications when calculating new accredited investor thresholds in the future, but also would limit the erosion of the accredited investor threshold over time. Finally, the application of bad actor disqualification provisions to all offerings under Regulation D would require issuers to determine whether executive officers and other related parties would subject the issuer to the disqualification provisions. Issuers subject to the disqualification provisions would be able to seek capital through registered offerings, with their heightened

[188] Under the current rules, disqualification provisions are included in Rule 505, but do not apply to Rule 504 or Rule 506. As proposed, the new disqualification provisions would apply to all Regulation D exemptions. Therefore, new costs would apply to offerings under Rules 504, 506 and 507. Costs would likely decrease for Rule 505 offerings, since the proposed disqualification provisions would not include ''underwriters,'' which are currently included in the Rule 505 disqualification provisions.

[189] See Private Pooled Investment Vehicle Release.

[190] 15 U.S.C. 77b(b).

protections for investors. Although this would add costs to an issuer's capital formation, we believe this provision would serve more generally to promote capital formation by providing additional investor protection and inspiring greater confidence in the private equity markets.

We are soliciting comment on whether to amend Rule 504 so that securities sold pursuant to a state law exemption that permits sales only to accredited investors would be deemed ''restricted securities'' for purposes of Rule 144. Given the resale restrictions typically required under state securities law exemptions, if this amendment were adopted, we do not believe it would have a material affect on issuers' ability to raise capital.

We request comment on whether the proposed amendments, if adopted, would promote or burden efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible. We believe adoption of the proposed revisions to Regulation D would have a minor impact on competition, and would have a positive impact on the efficiency of raising capital and on capital formation.

B. Accredited Natural Person

In December 2006, the Commission proposed to add a new category of accredited investor, defined as accredited natural person, under the Securities Act.[191] We do not believe that the additional questions regarding that proposal on which we solicit comment in this release change our analysis under Section 2(b) of the Securities Act with respect to that proposal. We solicit comment on that conclusion. For example, would harmonized definitions increase the efficiency of limited offerings? Would different investment thresholds affect capital formation? We also welcome further comments on all aspects of that analysis.

VII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Regulation D under the Securities Act.

A. Reasons for the Proposed Action

Our objective in this effort is to clarify and modernize our rules to bring them into line with the realities of modern market practice and communications technologies without compromising investor protection. Action in this area also is timely because our Advisory Committee on Smaller Public Companies made a number of recommendations relating to private and limited offerings in its final report dated April 23, 2006. We propose to revise Regulation D to provide additional flexibility to issuers and to clarify and improve the application of the rules through:

- Creating a new exemption from the registration provisions of the Securities Act for offers and sales of covered securities to ''large accredited investors'';
- Revising the definition of the term ''accredited investor'' to clarify it and reflect developments since its adoption;
- Shortening the timing required by the integration safe harbor for Regulation D offerings; and
- Providing uniform disqualification provisions to apply throughout Regulation D.

B. Objectives

The goal of Regulation D was to facilitate capital formation consistent with the protection of investors through simplification and clarification of existing exemptions, expansion of their availability and greater uniformity between federal and state exemptions. Our proposals offer revisions that would continue to simplify and clarify the exemptions and facilitate capital formation for smaller issuers, while protecting investors.

We propose to provide issuers with a more flexible safe harbor exemption in Rule 507 that would allow limited advertising in offerings made exclusively to large accredited investors. Proposed Rule 507 would permit issuers to publish a limited announcement of their offering, thereby providing issuers with greater access to potential investors and reducing their costs of raising capital. We also propose to adjust the definition of accredited investor:

- To add alternative investments-owned standards along with the current total asset and net worth standards, because an investments-owned standard may be easier to use and may provide a more accurate method to assess an investor's need for the protections of registration under the Securities Act;
- To adjust the dollar-amount thresholds in Rule 501 to account for inflation so that the thresholds will not erode over time;
- To clarify the list of legal entities that may qualify as accredited investors to eliminate existing uncertainty regarding the list;
- To clarify under the definition of ''joint investments'' that only 50 percent of the assets held jointly by spouses should be used in determining an individual's accredited investor status.

In addition, we propose to shorten the Regulation D integration safe harbor from six months to 90 days to provide flexibility to issuers to meet financing needs, which often are unpredictable. Finally, we propose that certain issuers be precluded from relying on Regulation D if they are subject to the disqualification provisions in proposed Rule 502(e). We believe these disqualification provisions will serve to guard against fraud in exempt offerings and improve the market's perceptions of these offerings, thereby reducing the cost of capital.

We are soliciting comment on whether to amend Rule 504 so that securities sold pursuant to a state law exemption that permits sales only to accredited investors would be deemed ''restricted securities'' for purposes of Rule 144. Given that Rule 504 issuers tend to be small entities, this amendment would affect small entities, to the extent that Rule 144 restrictions would be greater than current state law restrictions.

C. Legal Basis

The amendments are being proposed under the authority set forth in Sections 2(a)(15), 3(b), 4(2), 4(6), 18, 19, and 28 of the Securities Act.

D. Small Entities Subject to the Proposed Rules

The proposals would affect issuers that are small entities. For purposes of the Regulatory Flexibility Act under our rules, an issuer is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year.[192] For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. The proposed amendments would apply to all issuers that rely on Regulation D for an exemption to Securities Act registration.

All issuers that offer securities in reliance on Regulation D must file a Form D with the Commission. However, the vast majority of companies filing Form D are not required to provide financial reports to the Commission. As previously noted, in 2006, 16,829 issuers filed Form D. We believe that many of these issuers are small entities,

[191] See Private Pooled Investment Vehicle Release.

[192] 17 CFR 230.157.

but we currently do not collect information on total assets to determine if they are small entities for purposes of this analysis.

E. Reporting, Recordkeeping and Other Compliance Requirements

None of our proposed revisions to Regulation D would increase in any material way the information or time required to complete the Form D that must be filed with the Commission in connection with a Regulation D transaction. Our proposed revisions would also not require any further disclosure than is currently required in offerings made in reliance on Regulation D, other than requiring each issuer submitting a Form D to certify that it is not disqualified from relying on Regulation D for one of the reasons stated in proposed Rule 502(e).[193]

Proposed Rule 507 would permit an issuer to publish a limited advertisement and to solicit large accredited investors. The limitations of the advertisement are detailed in Rule 507(b)(2)(ii). The exemption builds on the accredited investor definition in Regulation D, requiring that an issuer evaluate whether investors meet the large accredited investor eligibility requirements. The same systems and procedures an issuer would use to determine accredited investor eligibility would be required to determine large accredited investor eligibility. Issuers may need to establish new procedures if they intend to make an offering on their own and relied on financial intermediaries to establish the procedures in the past.

Proposed Rule 502(e), establishing uniform disqualification provisions throughout Regulation D, would require issuers to determine whether the issuer, any predecessor of the issuer, any affiliated issuer, any director, executive officer, general partner or managing member of the issuer, any beneficial owner of 20 percent or more of any class of its equity securities, or any promoter currently connected with the issuer is subject to any of the disqualification provisions.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective of our proposals, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments and rules, we considered the following alternatives:

- The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of the rule's compliance and reporting requirements for small entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the proposed rules, or any part thereof, for small entities.

Regulation D provides exemptions to the registration requirements under the Securities Act. The proposed amendments to Regulation D would apply equally to all issuers that rely upon these exemptions. The regulation is designed to facilitate access to capital by providing exemptions to registration under the Securities Act. These exemptions allow issuers to raise capital without having to expend the time and resources necessary to undertake a registered public offering. Our proposals are intended to further the goals of Regulation D through simplification and clarification of the exemptions, expansion of their availability and by providing greater uniformity between federal and state exemptions.

With respect to the establishment of special compliance requirements or timetables under the proposals for small entities, we do not think this is feasible or appropriate. Our proposals are designed to further facilitate issuers' access to capital for both large and small issuers. Excepting small entities from our proposals would increase, rather than decrease, their regulatory burden. Nevertheless, we request comment on whether it is feasible or appropriate for small entities to have special requirements or timetables for compliance with our proposals.

With respect to clarification, consolidation and simplification of Regulation D's compliance and reporting requirements for small entities, we believe our proposals are designed to streamline and modernize Regulation D for all issuers, both large and small. Nevertheless, we request comment on ways to clarify, consolidate, or simplify any part of the proposed amendments and rules.

With respect to the use of performance or design standards, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Because the proposed rules seek compliance with specific standards without seeking to achieve pre-determined levels of capital formation or offering activity, design standards are necessary to achieve the objective of the proposals. Nevertheless, we request comment on these matters.

With respect to exempting small entities from coverage of these proposed rules, we believe such changes would be impracticable. These proposed rules are designed to facilitate an issuer's access to capital, regardless of the size of the issuer. We have endeavored throughout these proposed amendments and rules to minimize the regulatory burden on all issuers, including small entities, while meeting our regulatory objectives. Nevertheless, we request comment on ways in which we could exempt small entities from coverage of any unduly onerous aspects of our proposed amendments and rules.

H. Request for Comment

We encourage comments with respect to any aspect of this initial regulatory flexibility analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

I. Accredited Natural Person

In December 2006, the Commission proposed to add a new category of accredited investor, defined as accredited natural person, under the Securities Act.[194] We do not believe that the additional questions regarding that proposal on which we solicit comment in this release change our Initial Regulatory Flexibility Analysis provided on that proposal. We solicit comment on that conclusion and welcome further comments on all aspects of that analysis.

[193] In a companion release, we are proposing this change to Form D. See Release No. 33–8814 (June 29, 2007) [72 FR 37376].

[194] See Private Pooled Investment Vehicle Release.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[195] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

IX. Statutory Basis and Text of Proposed Amendments

The amendments are being proposed under the authority set forth in Sections 2(a)(15), 3(b), 4(2), 4(6), 18, 19 and 28 of the Securities Act, as amended.

Text of Proposed Amendments

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies).

17 CFR Part 230 and 239

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

2. Amend § 200.30–1 by revising paragraph (c) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(c) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Regulation D thereunder (§ 230.501 *et seq.* of this chapter), to authorize the granting of applications under Rule 502(e)(2)(ii) (§ 230.502(e)(2)(ii) of this chapter) upon the showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. Amend § 230.144A by adding Preliminary Note 8 to read as follows:

§ 230.144A Private resales of securities to institutions.

* * * * *

8. The publication of a general announcement of an offering in accordance with Rule 507 (17 CFR 230.507) would not preclude resales pursuant to Rule 144A.

* * * * *

5. Amend § 230.146 by adding paragraph (c) to read as follows:

§ 230.146 Rules under section 18 of the Act.

* * * * *

(c) *Definition of Qualified Purchaser.* For purposes of Section 18(b)(3) of the Act (15 U.S.C. 77r(b)(3)), the term ''qualified purchaser'' shall mean any large accredited investor as defined in § 230.501(k) with respect to an offer or sale in compliance with § 230.507, but this paragraph does not prohibit a state from imposing notice filing requirements that are substantially similar to those imposed by the Commission for transactions with such investors.

6. Revise § 230.215 to read as follows:

§ 230.215 Accredited investor.

The term *accredited investor* as used in section 2(a)(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)(ii)) shall include the following persons:

(a) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act, whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to this § 230.215); or any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such statute, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to this § 230.215) or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(c) Any corporation (including any non-profit corporation), Massachusetts or similar business trust, partnership, limited liability company, Indian tribe, labor union, governmental body, or other legal entity with substantially similar legal attributes, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to this § 230.215);

(d) Any director, executive officer, general partner, or managing member of the issuer of the securities being offered or sold, or any director, executive officer, general partner, or managing member of a general partner or managing member of that issuer;

(e) Any natural person whose individual net worth, or aggregate net worth with that person's spouse, at the time of purchase exceeds $1,000,000 or whose individual investments, or joint investments with that person's spouse, at the time of purchase exceeds $750,000 (each as adjusted for inflation in accordance with the Note to this § 230.215);

(f) Any natural person who had an individual income in excess of $200,000

[195] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

in each of the two most recent years or aggregate income with that person's spouse in excess of $300,000 in each of those years (each as adjusted for inflation in accordance with the Note to this § 230.215) and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to this § 230.215), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

Note to § 230.215: The dollar amounts of the accredited investor thresholds as set forth in paragraphs (a), (c), (e), (f) and (g) of this section shall be adjusted for inflation every five years, with the first adjustments effective July 1, 2012, by appropriate publication by the Commission in the **Federal Register**. The inflation adjustments shall be computed by: Dividing the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the Department of Commerce, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2006; and multiplying the dollar amounts by the quotient obtained. The adjusted dollar amounts shall be rounded to the nearest multiple of $10,000.

Instruction to § 230.215: All terms used in the definition of ''accredited investor'' shall have the meaning indicated in § 230.501.

7. The general authority citation for Part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933 is revised to read as follows:

Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933

Authority: Section 230.501 to 230.508 issued under 15 U.S.C. 77c, 77d, 77r, 77s, and 77z–3.

* * * * *

§§ 230.501 through 230.508 [Amended]

8. Amend Preliminary Note 2 to Regulation D, consisting of §§ 230.501 through 230.508, by revising the reference to ''19(c)'' to read ''19(d)''.

9. Amend § 230.501 by:

a. Revising paragraph (a).

b. Redesignating paragraphs (g) and (h) as paragraphs (i) and (*l*).

c. Revising the reference in newly redesignated paragraph (*l*)(1)(ii) that reads ''(h)(1)(i) or (h)(1)(iii)'' to read ''(*l*)(1)(i) or (*l*)(1)(iii)''.

d. Revising the reference in newly redesignated paragraph (*l*)(1)(iii) that reads ''(h)(1)(i) or (h)(1)(ii)'' to read ''(*l*)(1)(i) or (*l*)(1)(ii)''.

e. Revising the reference in Note 2 to newly redesignated paragraph (*l*) that reads ''paragraph (h)(3) and the disclosure required by paragraph (h)(4)'' to read ''paragraph (*l*)(3) and the disclosure required by paragraph (*l*)(4)''.

f. Adding new paragraphs (g), (h), (j) and (k).

The revisions and additions read as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(a) *Accredited investor.* ''Accredited investor'' shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act, whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to paragraph (a)); or any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such statute, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to paragraph (a)) or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any corporation (including any non-profit corporation), Massachusetts or similar business trust, partnership, limited liability company, Indian tribe, labor union, governmental body, or other legal entity with substantially similar legal attributes, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to paragraph (a));

(4) Any director, executive officer, general partner, or managing member of the issuer of the securities being offered or sold, or any director, executive officer, general partner, or managing member of a general partner or managing member of that issuer;

(5) Any natural person whose individual net worth, or aggregate net worth with that person's spouse, at the time of purchase exceeds $1,000,000 or whose individual investments, or joint investments with that person's spouse, at the time of purchase exceeds $750,000 (each as adjusted for inflation in accordance with the Note to paragraph (a));

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or aggregate income with that person's spouse in excess of $300,000 in each of those years (each as adjusted for inflation in accordance with the Note to paragraph (a)) and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of $5,000,000 or investments in excess of $5,000,000 (each as adjusted for inflation in accordance with the Note to paragraph (a)), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

Note to paragraph (a): The dollar amounts of the accredited investor thresholds as set forth in paragraphs (a)(1), (a)(3), (a)(5), (a)(6) and (a)(7) of this section and the large accredited investor thresholds as set forth in paragraphs (k)(1) through (k)(3) of this section shall be adjusted for inflation every five years, with the first adjustments effective July 1, 2012, by appropriate publication by the Commission in the **Federal Register**. The inflation adjustments shall be computed by: Dividing the annual value of the Personal

Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the Department of Commerce, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2006; and multiplying the dollar amounts by the quotient obtained. The adjusted dollar amounts shall be rounded to the nearest multiple of $10,000.

* * * * *

(g) *Governmental body.* ''Governmental body'' shall mean any:

(1) Nation, state, county, town, village, district or other jurisdiction of any nature;

(2) Federal, State, local, municipal, foreign or other government;

(3) Governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal);

(4) Multi-national organization or body; or

(5) Body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

(h) *Investments.* ''Investments'' shall mean:

(1) Securities (as defined by section 2(a)(1) of the Act), other than securities issued by an issuer that is controlled by the prospective purchaser that owns such securities, unless such issuer is:

(i) An investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)), or a company that would be an investment company under section 3(a) but for the exclusions from that definition provided by sections 3(c)(1) through 3(c)(9) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) through 3(c)(9)), or the exclusions provided by § 270.3a–6 or § 270.3a–7 of this chapter, or a commodity pool;

(ii) A company that:

(A) Files reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(B) Has a class of securities that are listed on a ''designated offshore securities market'' as such term is defined by Regulation S under the Act (§§ 230.901 through 230.904); or

(iii) A company with shareholders' equity of not less than $50 million (determined in accordance with generally accepted accounting principles) as reflected on the company's most recent financial statements, provided that such financial statements present the information as of a date within 16 months preceding the date on which the prospective purchaser acquires the offered securities;

(2) Real estate held for investment purposes;

(3) Commodity interests held for investment purposes. For purposes of this section, commodity interests means commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of:

(i) Any contract market designated for trading such transactions under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) and the rules thereunder (17 CFR 1.1 through 190.10); or

(ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 of the rules under the Commodity Exchange Act (17 CFR 30.1 through 30.12);

(4) Physical commodities held for investment purposes. For purposes of this paragraph, physical commodities means any physical commodity with respect to which a commodity interest is traded on a market specified in paragraph (h)(3)(iii) of this section;

(5) To the extent not securities, financial contracts (as such term is defined in section 3(c)(2)(B)(ii) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(2)(B)(ii))) entered into for investment purposes; and

(6) Cash and cash equivalents (including foreign currencies) held for investment purposes. For purposes of this section, cash and cash equivalents include:

(i) Bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; and

(ii) The net cash surrender value of an insurance policy.

Note 1 to paragraph (h): Solely for the purpose of determining ''investment purposes'' in this paragraph (h), real estate shall not be considered to be held for investment purposes by a prospective purchaser if it is used by the prospective purchaser, a sibling, spouse or former spouse, a direct lineal descendant by birth or adoption, or spouse of such lineal descendant or ancestor for personal purposes or as a place of business, or in connection with the conduct of the trade or business of the prospective purchaser or such related person, provided that real estate owned by a prospective purchaser who is engaged primarily in the business of investing, trading or developing real estate in connection with such business may be deemed to be held for investment purposes. Residential real estate shall not be deemed to be used for personal purposes if deductions with respect to such real estate are not disallowed by section 280A of the Internal Revenue Code (26 U.S.C. 280A).

Note 2 to paragraph (h): Solely for the purpose of determining ''investment purposes'' in this paragraph (h), a commodity interest or physical commodity owned, or a financial contract entered into, by the prospective purchaser who is engaged primarily in the business of investing, reinvesting, or trading in commodity interests, physical commodities or financial contracts in connection with such business may be deemed to be held for investment purposes.

Note 3 to paragraph (h): Solely for the purpose of determining whether a prospective purchaser meets the dollar-amount investor thresholds in Regulation D, the aggregate amount of investments owned and invested on a discretionary basis shall be the investments' fair market value on the most recent practicable date or their cost provided that in the case of commodity interests, the amount of investments shall be the value of the initial margin or option premium deposited in connection with such commodity interests. There shall be deducted from the amount of such investor's investments the amount of any outstanding indebtedness incurred to acquire or for the purpose of acquiring the investments owned by such person.

* * * * *

(j) *Joint investments.* ''Joint investments'' shall mean:

(1) In the case of a purchase binding on both spouses and where both spouses sign the investment documentation, the aggregate of their investments held individually and their investments held jointly or as community property or similar shared ownership interest; or

(2) In the case of a purchase made by an individual spouse or where only an individual spouse signs the investment documentation, the aggregate of the investments held individually by the purchaser and 50 percent of any investments held jointly with the individual's spouse or as community property or similar shared ownership interest.

(k) *Large accredited investor.* ''Large accredited investor'' shall mean an accredited investor as defined in paragraph (a) of this section, except that:

(1) Any person described in paragraph (a)(1), (a)(3), or (a)(7) of this section required to have a dollar amount of assets shall instead be required to have investments in excess of $10,000,000 (as adjusted for inflation in accordance with the Note to paragraph (a) of this section);

(2) Any person described in paragraph (a)(5) of this section shall be required to have investments, or joint investments with that person's spouse, in excess of $2,500,000 (as adjusted for inflation in accordance with the Note to paragraph (a) of this section);

(3) Any person described in paragraph (a)(6) of this section shall be required to

have had an individual income in excess of $400,000 in each of the two most recent years or aggregate income with that person's spouse in excess of $600,000 in each of those years (each as adjusted for inflation in accordance with the Note to paragraph (a) of this section) and have a reasonable expectation of reaching the same income level in the current year; and

(4) All of the equity owners of entities described in paragraph (a)(8) of this section shall be required to be large accredited investors.

* * * * *

10. Amend § 230.502 by:

a. Revising the references that read ''six months'' in paragraph (a) to read ''90 days'' and revising the reference that reads ''six month periods'' in paragraph (a) to read ''90-day periods''.

b. Adding to the first sentence of paragraph (c) the phrase ''or § 230.507(b)(2)(ii)'' after the phrase ''Except as provided in § 230.504(b)(1)''.

c. Adding paragraph (e).

The addition reads as follows:

§ 230.502 General conditions to be met.

* * * * *

(e) *Disqualification provisions.* (1) An issuer may not rely on Regulation D if the issuer, any predecessor of the issuer, any affiliated issuer, any director, executive officer, general partner, or managing member of the issuer, any beneficial owner of 20 percent or more of any class of its equity securities, or any promoter currently connected with the issuer:

(i) Within the last 5 years, has filed a registration statement that is the subject of a currently effective permanent or temporary injunction of a court or an administrative stop order or similar order entered by the Commission or the securities commission (or any agency or office performing like functions) of any state;

(ii) Within the last 10 years, has been convicted of a criminal offense in connection with the offer, purchase or sale of any security or involving the making of a false filing with the Commission;

(iii) Within the last 5 years, has been the subject of an adjudication or determination, after notice and opportunity for hearing, by a Federal or State regulator that the person violated Federal or State securities or commodities law or a law under which a business involving investments, insurance, banking, or finance is regulated; or

(iv) Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last 5 years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving securities, commodities, investments, insurance, banking, or finance, including an order for failure to comply with § 230.503;

(v) Is currently subject to a cease and desist order, entered within the last 5 years, issued under Federal or State securities, commodities, investment, insurance, banking or finance laws; or

(vi) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles or trade.

(2) Paragraph (e)(1) of this section shall not apply if:

(i) Upon a showing of good cause and without prejudice to any other action by the Commission, the Commission determines that it is not necessary under the circumstances that the exemption be denied; or

(ii) The issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under paragraph (e)(1).

§ 230.503 [Amended]

11. Amend § 230.503 paragraph (a) by revising the reference that reads ''§ 230.504, § 230.505, or § 230.506'' to read ''§ 230.504, § 230.505, § 230.506, or § 230.507''.

§ 230.504 [Amended]

12. Amend § 230.504 paragraph (b)(1) by revising the reference that reads ''230.502(a), (c) and (d)'' to read ''230.502(a), (c), (d) and (e)''.

§ 230.505 [Amended]

13. Amend § 230.505 by removing paragraph (b)(2)(iii).

14. Amend § 230.506 by adding a Note at the end to read as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

Note to § 230.506: Securities sold in compliance with § 230.506 are ''covered securities'' within the meaning of section 18 of the Act by reason of section 18(b)(4)(D) of the Act, which limits state regulation as provided in section 18 of the Act.

15. Revise § 230.507 to read as follows:

§ 230.507 Exemption for limited offers and sales to large accredited investors.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this section by an issuer shall be exempt from the provisions of section 5 of the Act under section 28 of the Act.

(b) *Conditions to be met.*— (1) *General conditions.* To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 and 230.502(a), (c), (d) and (e) to the extent not superseded by paragraph (b)(2)(ii) of this section.

(2) *Specific Conditions.*—(i) *Limitation on purchasers.* All purchasers are or the issuer reasonably believes that all purchasers are large accredited investors.

(ii) *Limited announcement.* Notwithstanding § 230.502(c), offers and sales of securities may qualify for exemption under this section if the issuer or a person acting on the issuer's behalf publishes in written form an announcement of a proposed offering that prominently states that sales will be made to large accredited investors only, no money or other consideration is being solicited or will be accepted through the announcement, and the securities have not been registered with or approved by the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration, and the announcement contains no more than the following optional information:

(A) The name and address of the issuer;

(B) The name, type, number, price and aggregate amount of securities being offered and a brief description of the securities;

(C) A description of what ''large accredited investor'' means;

(D) Any suitability standards and minimum investment requirements for prospective purchasers in the offering;

(E) A brief description of the business of the issuer in 25 or fewer words; and

(F) The name, address and telephone number of a person to contact for additional information.

(iii) *Additional Information.* The issuer or a person acting on the issuer's behalf may provide information in addition to the announcement permitted under subparagraph (b)(2)(ii) of this section to a prospective purchaser only if the issuer reasonably believes that the prospective purchaser is a large accredited investor. Information may be delivered to prospective purchasers through an electronic database that is restricted to large accredited investors.

Note 1 to § 230.507: Securities sold to large accredited investors in compliance with

§ 230.507 are ''covered securities'' within the meaning of section 18 of the Act by reason of section 18(b)(3) of the Act and § 230.146(c), which limits state regulation as provided in section 18 of the Act.

Note 2 to § 230.507: A private pooled investment vehicle that would be an investment company but for the exclusion provided by § 3(c)(1) or § 3(c)(7) of the Investment Company Act may not rely on § 230.507.

§ 230.508 [Amended]

16. Amend § 230.508 by:

a. Revising the references that read ''§ 230.504, § 230.505 or § 230.506'' in paragraph (a), (a)(3) and (b) to read ''§ 230.504, § 230.505, § 230.506 or § 230.507''.

b. Revising the reference that reads ''and paragraph (b)(2)(i) of § 230.506'' in paragraph (a)(2) to read '', paragraph (b)(2)(i) of § 230.506 and paragraph (b)(2)(i) of § 230.507''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

18. Amend Form D (referenced in § 239.500), by adding a check box that reads ''Rule 507'' between the ''Rule 506'' and ''Section 4(6)'' check boxes in the ''Filing Under'' information requested in the forepart of the Form.

Note: The text of Form D does not, and the amendments will not, appear in the Code of Federal Regulations.

Dated: August 3, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–15506 Filed 8–9–07; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in California; published 8-9-07

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Witchweed; published 8-10-07

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National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Central Gulf of Alaska rockfish; published 7-11-07

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Hurricane Katrina; impact on communications networks; independent panel review recommendations; published 7-11-07

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Kenosha Harbor, Kenosha, WI; published 5-31-07

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Raisins produced from grapes grown in California; comments due by 8-16-07; published 8-1-07 [FR E7-14825]

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Radio services, special:

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Coast Guard

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Choptank River, MD; comments due by 8-15-07; published 7-16-07 [FR E7-13706]

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HOMELAND SECURITY DEPARTMENT

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One-step turnkey design-build contracts; U.S. Coast Guard facilities; comments due by 8-13-07; published 7-13-07 [FR E7-13646]

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Fish and Wildlife Service

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1927/P.L. 110–55
Protect American Act of 2007 (Aug. 5, 2007; 121 Stat. 552)

H.R. 3311/P.L. 110–56

To authorize additional funds for emergency repairs and reconstruction of the Interstate I-35 bridge located in Minneapolis, Minnesota, that collapsed on August 1, 2007, to waive the $100,000,000 limitation on emergency relief funds for those emergency repairs and reconstruction, and for other purposes. (Aug. 6, 2007; 121 Stat. 558)

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