



Federal Register

12-31-07

Vol. 72 No. 249

Monday

Dec. 31, 2007

Pages 74153-74408



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

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

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

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

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

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

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

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

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

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-512-1800
Assistance with public subscriptions	202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche	202-512-1800
Assistance with public single copies	1-866-512-1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	202-741-6005
Assistance with Federal agency subscriptions	202-741-6005



Contents

Federal Register

Vol. 72, No. 249

Monday, December 31, 2007

Agriculture Department

See Farm Service Agency

See Forest Service

See Rural Business-Cooperative Service

Air Force Department

NOTICES

Environmental statements; record of decision:

Base realignment and closure—

Westfield-Barnes Airport, MA, 74274–74275

Antitrust Division

NOTICES

National cooperative research notifications:

Open DeviceNet Vender Association, Inc., 74331

Centers for Medicare & Medicaid Services

NOTICES

Agency information collection activities; proposals, submissions, and approvals

Correction, 74297

Children and Families Administration

NOTICES

Grants and cooperative agreements; availability, etc.:

Family Violence Prevention and Services, 74297–74316

Coast Guard

NOTICES

Committees; establishment, renewal, termination, etc.:

Towing Safety Advisory Committee, 74319–74320

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

PROPOSED RULES

Federal speculative position limits; revision; comment period extension, 74213

Defense Department

See Air Force Department

PROPOSED RULES

Federal Acquisition Regulation (FAR):

Governmentwide commercial purchase card restrictions for Treasury Offset Program debts, 74255–74257

Drug Enforcement Administration

NOTICES

Registration revocations, restrictions, denials, reinstatements:

Dively, Jon Karl, D.D.S., 74332–74334

Lawsons, Inc., 74334–74339

Applications, hearings, determinations, etc.:

Chattem Chemicals, Inc., 74331

Education Department

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74275

Employment and Training Administration

NOTICES

Adjustment assistance; applications, determinations, etc.:

Advanced Electronics, Inc., 74340–74341

Boston Communications Group, Inc., 74341

Healthcare Management Partners, LLC, 74341–74342

Hyper Knits Sales, Inc. et al., 74342–74345

Lighting Products, Inc., et al., 74345–74346

Shogren Hosiery Manufacturing Co., Inc., 74346

Siemens VDO Automotive Corp., 74346

Warnaco Group et al., 74346–74347

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

Illinois, 74250–74252

Air quality planning purposes; designation of areas:

Texas, 74252–74255

NOTICES

Superfund; response and remedial actions, proposed settlements, etc.:

Mason Road Lead Site, OH, 74283

Farm Service Agency

RULES

Special programs:

Direct Farm Loan Programs; regulatory streamlining

Correction, 74153–74162

Federal Aviation Administration

RULES

Standard instrument approach procedures, 74166–74168

PROPOSED RULES

Airworthiness directives:

Erickson Air-Crane Inc., 74210–74213

NOTICES

Passenger facility charges; applications, etc.:

Charlotte, NC, et al., 74402–74404

Federal Communications Commission

NOTICES

Common carrier services:

Wireless telecommunications services—

3650-3700 MHz band licensing and registration process, 74283–74288

Federal Energy Regulatory Commission

NOTICES

Electric rate and corporate regulation combined filings, 74278–74280

Environmental statements; availability, etc.:

Hyrum City Hydroelectric Project, 74280–74281

Hydroelectric applications, 74281

National Register of Historic Places:

Programmatic agreement for managing properties; restricted service list—

Alcoa Power Generating, Inc., 74281–74283

Applications, hearings, determinations, etc.:

Alpha Energy Master, Ltd., 74275–74276

ANR Pipeline Co., 74276
Dominion Transmission, Inc., 74276–74277
East Tennessee Natural Gas, LLC, 74277
Energy Transfer Partners, L.P., et al., 74277–74278
Questar Pipeline Co., 74278

Federal Financial Institutions Examination Council

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74288–74289

Federal Highway Administration

NOTICES

Federal agency actions on proposed highways; judicial review claims:
Bonner County, ID; Sandpoint Project, 74404

Federal Motor Carrier Safety Administration

NOTICES

Meetings:
Medical Review Board, 74404–74405
Motor carrier safety standards:
Exemption applications—
Colorado Mountain Express, 74405–74407

Federal Railroad Administration

RULES

Alcohol and drug testing; minimum random testing rates determination, 74193

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74407–74408

Federal Reserve System

NOTICES

Banks and bank holding companies:
Formations, acquisitions, and mergers, 74289

Federal Trade Commission

NOTICES

Premerger notification waiting periods; early terminations, 74289–74294

Financial Management Service

See Fiscal Service

Fiscal Service

NOTICES

Interest rates:
Contract disputes; prompt payment rates, 74408

Fish and Wildlife Service

NOTICES

Environmental statements; availability, etc.:
Incidental take permits—
Travis County, TX; golden-cheeked warbler, 74323–74324

Forest Service

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74266

General Services Administration

PROPOSED RULES

Federal Acquisition Regulation (FAR):
Governmentwide commercial purchase card restrictions for Treasury Offset Program debts, 74255–74257

NOTICES

Privacy Act; systems of records, 74294–74296

Health and Human Services Department

See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Health Resources and Services Administration
See National Institutes of Health

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74296–74297

Health Resources and Services Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74316–74318

Homeland Security Department

See Coast Guard

Housing and Urban Development Department

NOTICES

Grants and cooperative agreements; availability, etc.:
Resident Opportunities and Self-Sufficiency Family and Homeownership Program, 74320–74323

Interior Department

See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service

RULES

Income taxes:
Nuclear decommissioning funds, 74175–74192
Procedure and administration:
Census Bureau; disclosure of return information, 74192–74193

PROPOSED RULES

Employment taxes and collection of income taxes at source:
Employment tax adjustments and refund claims; hearing, 74233–74245

Income taxes:

Nuclear decommissioning funds, 74213–74215
Pension funding; assets and liabilities measurement, 74215–74233

Procedure and administration:

Census Bureau; disclosure of return information, 74246

International Trade Administration

NOTICES

Antidumping:
Hot-rolled carbon steel flat products from—
India, 74267–74272
Uranium from—
Russian Federation, 74272
North American Free Trade Agreement (NAFTA);
binational panel reviews:
Gray portland cement and clinker from—
Mexico, 74272–74273
Tariff-rate quotas:
Worsted wool fabrics, 74273–74274

International Trade Commission

NOTICES

Import investigations:
R-134a coolant, 74326–74327
Switches and products containing same, 74327–74329

Systems for detecting and removing viruses or worms, components and products containing same, 74329–74330

Justice Department

See Antitrust Division

See Drug Enforcement Administration

NOTICES

Pollution control; consent judgments:

Merck & Co., Inc., 74330

Perma-Fix of Dayton, Inc., 74330–74331

Labor Department

See Employment and Training Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 74339–74340

Land Management Bureau

NOTICES

Meetings:

North Slope Science Initiative, Science Technical Advisory Panel, 74324

Oil and gas leases:

Arkansas, 74324–74325

South Dakota, 74325

Realty actions; sales, leases, etc.:

Arizona, 74325–74326

National Aeronautics and Space Administration

PROPOSED RULES

Federal Acquisition Regulation (FAR):

Governmentwide commercial purchase card restrictions for Treasury Offset Program debts, 74255–74257

National Institutes of Health

NOTICES

Meetings:

National Cancer Institute, 74318

National Human Genome Research Institute, 74318–74319

National Oceanic and Atmospheric Administration

RULES

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic bluefin tuna, 74193–74197

Northeastern United States fisheries—

Bivalve molluscan shellfish and whole or roe-on scallops, 74207–74208

Summer flounder, scup, and black sea bass, 74197–74207

PROPOSED RULES

International fisheries regulations:

Pacific halibut—

Guided sport charter vessel fishery, 74257–74265

NOTICES

Scientific research permit applications, determinations, etc., 74274

National Science Foundation

NOTICES

Meetings; Sunshine Act, 74347

Nuclear Regulatory Commission

RULES

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list, 74162–74166

PROPOSED RULES

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list, 74209–74210

NOTICES

Meetings:

Geologic repository operations area security and material control and accounting requirements, 74352

Nuclear reactor fuel manufacturing; license modification, amendments, etc.:

Nuclear Fuel Services, Inc., 74352–74354

Operating licenses, amendments; no significant hazards considerations; biweekly notices, 74354–74365

Plants and materials; physical protection:

Category III fuel facilities; independent spent fuel storage installations, conversion facilities and gaseous diffusion plants; information collection, 74365

Applications, hearings, determinations, etc.:

Hedger, Cary, 74347–74350

Missouri-Rolla University, 74350–74352

Public Debt Bureau

See Fiscal Service

Rural Business-Cooperative Service

NOTICES

Guaranteed loans (FY 2008); annual renewal fees, 74266–74267

Saint Lawrence Seaway Development Corporation

PROPOSED RULES

Seaway regulations and rules:

Miscellaneous amendments, 74247–74250

Securities and Exchange Commission

RULES

Financial reporting matters:

Staff accounting bulletin No. 110, 74168–74169

NOTICES

Investment Company Act of 1940:

Main Street Capital Corp., et al., 74366–74370

Millennium India Acquisition Company Inc., 74370–74372

UBS Funds et al., 74372–74373

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 74375–74380

Chicago Stock Exchange, Inc., 74381–74382

Financial Industry Regulatory Authority, Inc., 74382–74383

International Securities Exchange, LLC, 74373–74375, 74383–74385

NASDAQ Stock Market LLC, 74385–74386

New York Stock Exchange LLC, 74386–74388

NYSE Arca, Inc., 74388–74392

Philadelphia Stock Exchange, Inc., 74392–74400

Small Business Administration

NOTICES

Disaster loan areas:

Hawaii, 74400

Washington, 74400–74401

Social Security Administration

NOTICES

Representative direct payment fee assessment rate (2008), 74401

State Department**RULES**

Passports:

Card format passport; fee schedule changes, 74169–74173

Visas; nonimmigrant documentation:

Increased security measures, etc., 74174–74175

NOTICES

Culturally significant objects imported for exhibition:

Arms and Armor from Imperial Austria, 74401

Lure of the East: British Orientalist Painting, 1830-1925,
74401–74402

Meetings:

International Telecommunication Advisory Committee,
74402**Transportation Department***See* Federal Aviation Administration*See* Federal Highway Administration*See* Federal Motor Carrier Safety Administration*See* Federal Railroad Administration*See* Saint Lawrence Seaway Development Corporation**Treasury Department***See* Fiscal Service*See* Internal Revenue Service

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

766.....74153

10 CFR

72.....74162

Proposed Rules:

72.....74209

14 CFR

97.....74166

Proposed Rules:

39.....74210

17 CFR

211.....74168

Proposed Rules:

150.....74213

22 CFR

22.....74169

41.....74174

51.....74169

26 CFR

1.....74175

301.....74192

602.....74175

Proposed Rules:

1 (2 documents) 74213,
74215

31.....74233

301.....74246

33 CFR**Proposed Rules:**

401.....74247

40 CFR**Proposed Rules:**

52.....74250

81.....74252

48 CFR**Proposed Rules:**

4.....74255

8.....74255

13.....74255

17.....74255

32.....74255

52.....74255

49 CFR

219.....74193

50 CFR

635.....74193

648 (2 documents) 74197,
74207

Proposed Rules:

300.....74257

Rules and Regulations

Federal Register

Vol. 72, No. 249

Monday, December 31, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 766

RIN 0560–AF60

Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs; Correction

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule titled "Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs" that was published November 8, 2007. The Agency is correcting the order of two forms in the appendices and inserting the date of

"12–31–07" on form FSA–2512 in the upper left corner.

DATES: *Effective Date:* December 31, 2007.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Ball, Regulatory Review Group, USDA FSA EPAS RRG, STOP 0572, 1400 Independence Avenue, SW., Washington, DC 20250–0517, (202) 720–42893, e-mail:

Maryann.Ball@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: On November 8, 2007 (72 FR 63242), the FSA published rules streamlining its direct farm loan programs. In that document there were errors this document corrects. There was an inadvertent omission of text in the definition of "beginning farmer" and Appendices A and B to Subpart C of Part 766 should be forms FSA–2512 and FSA–2510, respectively, as referred to in the regulatory text. The Appendices were inadvertently printed incorrectly with the forms in numerical order and need to be reversed. In addition, when form FSA–2512 was published it had "(Proposal)" following the form number on each page; it should have had the effective date "(12–31–07)". The replacement form FSA–2512 has the date "12–31–07" following FSA–2512 in the upper left corner of each page.

Correction

The Agency is making the following corrections to the final rule published November 8, 2007 (72 FR 63242).

1. On page 63286 in the definition of "Beginning farmer," in the first sentence of the paragraph (5), add the words "median farm" after the words " * * * 30 percent of the".

2. On pages 63335–63343 (Appendix B to Subpart C of Part 766), remove the form FSA–2512 titled "Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less than 90 Days Past Due" and add in its place the form FSA–2510, titled "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due," from pages 63326–63334 (Appendix A to Subpart C of Part 766) and add the following new form FSA–2512 to Appendix A to Subpart C of Part 766 at page 63326.

The corrected form FSA–2512 reads as follows:

Signed in Washington, DC on December 18, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

Appendix A to Subpart C of Part 766

BILLING CODE 3410–05–P

This form is available electronically.

FSA-2512
(12-31-07)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 4

**NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE
CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE**

This notice informs you of servicing options that may be available to current borrowers, financially distressed borrowers, or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f).

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

FSA-2512 (12-31-07)

Page 2 of 9

Included with this notice you will find information on:

- (a) Primary loan servicing programs;
- (b) Conservation Contract Program;
- (c) Current market value buyout;
- (d) Homestead Protection Program;
- (e) Debt settlement programs;
- (f) Forms, documentation, and information needed to apply;
- (g) How to get copies of the Agency's handbooks and forms;
- (h) Reconsideration, mediation, negotiation and appeal rights;
- (i) The right not to be discriminated against.

(a) Primary Loan Servicing ProgramsEligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

- (1) You are financially distressed or delinquent due to one of the following circumstances beyond your control:
 - (i) Illness, injury, or death of a borrower or other individual who operates the farm;
 - (ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
 - (iii) Widespread economic conditions such as low commodity prices;
 - (iv) Damage or destruction of property essential to the farming operation; or
 - (v) Loss of, or reduction in, your or your spouse's essential non-farm income.
- (2) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.
- (3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.
- (4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you are eligible for primary loan servicing and can develop a feasible plan, you will have 45 days from notice to accept the Agency's offer for loan servicing.

Lien requirements

If you are delinquent, are offered loan servicing, and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

You must pay a portion of the interest that has accrued on your loans prior to closing the servicing action.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

- (1) The interest rate for that type of loan on the date a complete servicing application was received;
- (2) The interest rate for that type of loan on the date of restructure; or
- (3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

- (1) The collateral pledged as security for your FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;
- (2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
- (3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you are delinquent on your FLP loan and you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is \$300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value.

Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

- (1) Sell or convey the real estate;
- (2) Stop farming;
- (3) Pay off your entire FLP debt; or
- (4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If you are delinquent and the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

- FLP loan;
- (1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
 - (2) The maximum debt to be written off with buyout does not exceed \$300,000; and
 - (3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

- (1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
- (2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

- (1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
- (2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
- (3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
- (4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

- (1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
- (2) You must maintain the property in good condition during the term of the lease.
- (3) You may lease the property for up to 5 years but no less than 3 years.
- (4) You cannot sublease the property.
- (5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
- (6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the FLP debt you owe the Agency may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. The Agency will not finance these alternatives.

Settlement alternatives

Settlement alternatives include:

- (1) Compromise: A lump-sum payment of less than the total FLP debt owed;
- (2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
- (3) Cancellation: Satisfaction of Agency debt without payment.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, documentation, and information needed to apply

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2513, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2512" signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History" or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than \$1,000 can be verified by a credit report. If debts of \$1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) **Reconsideration, mediation, negotiation, and appeal rights**

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

[FR Doc. 07-6201 Filed 12-28-07; 8:45 am]
BILLING CODE 3410-05-C

NUCLEAR REGULATORY COMMISSION**10 CFR Part 72****RIN 3150-AI24****List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 5**

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its spent fuel storage cask regulations by revising the Holtec International HI-STORM 100 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1014. Amendment No. 5 includes deletion of the requirement to perform thermal validation tests on thermal systems; an increase in the design basis maximum decay heat loads, namely, to 34 kilowatts (kW) for uniform loading and 36.9 kW for regionalized loading, and introduction of a new decay heat regionalized scheme; an increase in the maximum fuel assembly weight for boiling water reactor fuel in the Multi-Purpose Canister (MPC)-68 from 700 to 730 pounds; an increase in the maximum fuel assembly weight of up to 1,720 pounds for assemblies not requiring spacers, otherwise 1,680 pounds; changes to the assembly characteristics

of 16×16 pressurized water reactor fuel assemblies to be qualified for storage in the HI-STORM 100 cask system; a change in the fuel storage locations in the MPC-32 for fuel with axial power shaping rod assemblies and in the fuel storage locations in the MPC-24, MPC-24E, and the MPC-32 for fuel with control rod assemblies, rod cluster control assemblies, and control element assemblies; elimination of the restriction that fuel debris can only be loaded into the MPC-24EF, MPC-32F, MPC-68F, and MPC-68FF canisters; introduction of a requirement that all MPC confinement boundary components and any MPC components exposed to spent fuel pool water or the ambient environment be made of stainless steel or, for MPC internals, neutron absorber or aluminum; the addition of a threshold heat load below which operation of the Supplemental Cooling System would not be required and modification of the design criteria to simplify the system; minor editorial changes to include clarification of the description of anchored casks, correction of typographical/editorial errors, clarification of the definitions of loading operations, storage operations, transport operations, unloading operations, cask loading facility, and transfer cask in various locations throughout the CoC and Final Safety Analysis Report; and modification of the definition of non-fuel hardware to include the individual parts of the items defined as non-fuel hardware.

DATES: The final rule is effective March 17, 2008, unless significant adverse comments are received by January 30,

2008. 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. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AI24) 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. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415-1966].

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document 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 PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdrc@nrc.gov. An electronic copy of the CoC No. 1014, the revised Technical Specifications (TS), and the preliminary safety evaluation report (SER) for Amendment No. 5 can be found in a package under ADAMS Accession No. ML072540157.

CoC No. 1014, the revised TS, the preliminary SER for Amendment No. 5, and the environmental assessment are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail jmm2@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail jmm2@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by

the Commission." Section 133 of the NWPAA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72, which added a new Subpart K within 10 CFR Part 72, entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241) that approved the HI-STORM 100 cask system design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1014.

Discussion

On December 30, 2004, the certificate holder, Holtec International (Holtec) submitted an application to the NRC that requested an amendment to CoC No. 1014. The amendment principally included changes to increase the design basis maximum decay heat loads of the HI-STORM 100 cask system and add a new underground storage configuration, designated the HI-STORM 100U, to the CoC. On November 29, 2006, Holtec withdrew the portion of the application that added the HI-STORM 100U to the CoC. The application, as modified by the December 22, 2006, Revision 2, submittal, and as supplemented on March 20, 2007, March 30, 2007, May 4, 2007, May 22, 2007, June 15, 2007, July 17, 2007, and September 6, 2007, requested changes to the CoC, the TS, and the Final Safety Analysis Report (FSAR), to modify the HI-STORM 100 cask system. Specifically, the proposed changes included deletion of the requirement to perform thermal validation tests on thermal systems; an increase in the design basis maximum decay heat loads, namely, to 34 kW for uniform loading and 36.9 kW for regionalized loading, and introduction of a new decay heat regionalized scheme; increase in the maximum fuel assembly weight for boiling water reactor fuel in the MPC-68 from 700 to 730 pounds; an increase in the maximum fuel assembly weight of up to 1,720 pounds for assemblies not requiring spacers, otherwise 1,680

pounds; changes to the assembly characteristics of 16×16 pressurized water reactor (PWR) fuel assemblies to be qualified for storage in the HI-STORM 100 cask system; a change in the fuel storage locations in the MPC-32 for fuel with axial power shaping rod assemblies (APSRAs) and in the fuel storage locations in the MPC-24, MPC-24E, and the MPC-32 for fuel with control rod assemblies (CRAs), rod cluster control assemblies (RCCAs), and control element assemblies (CEAs); elimination of the restriction that fuel debris can only be loaded into the MPC-24EF, MPC-32F, MPC-68F, and MPC-68FF canisters; introduction of a requirement that all MPC confinement boundary components and any MPC components exposed to spent fuel pool water or the ambient environment be made of stainless steel or, for MPC internals, neutron absorber or aluminum; the addition of a threshold heat load below which operation of the Supplemental Cooling System (SCS) would not be required and modification of the design criteria to simplify the system; minor editorial changes to include clarification of the description of anchored casks, correction of typographical/editorial errors, clarification of the definitions of loading operations, storage operations, transport operations, unloading operations, cask loading facility, and transfer cask in various locations throughout the CoC and the FSAR; and modification of the definition of non-fuel hardware to include the individual parts of the items defined as non-fuel hardware.

No other changes to the Holtec HI-STORM 100 cask system were requested in this application. As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the HI-STORM 100 cask system listing in 10 CFR 72.214 by adding Amendment No. 5 to CoC No. 1014. The amendment consists of the changes described above, as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended HI-STORM 100 cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. After this direct final rule becomes effective, persons who hold a

general license under 10 CFR 72.210 may load spent nuclear fuel into HI-STORM 100 casks that meet the criteria of Amendment No. 5 to CoC No. 1014, in accordance with 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate No. 1014 is revised by adding the effective date of Amendment No. 5.

Procedural Background

This rule is limited to the changes contained in Amendment No. 5 to CoC No. 1014 and does not include other aspects of the HI-STORM 100 dry storage cask system. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on March 17, 2008. However, if the NRC receives significant adverse comments on this direct final rule by January 30, 2008, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, 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 NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the HI-STORM 100 cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

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.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a

major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the HI-STORM 100 cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license.

The amendment will include deletion of the requirement to perform thermal validation tests on thermal systems; an increase in the design basis maximum decay heat loads, namely, to 34 kW for uniform loading and 36.9 kW for regionalized loading, and introduction of a new decay heat regionalized scheme; an increase in the maximum fuel assembly weight for BWR fuel in the MPC-68 from 700 to 730 pounds; an increase in the maximum fuel assembly weight of up to 1,720 pounds for assemblies not requiring spacers, otherwise 1,680 pounds; changes to the assembly characteristics of 16×16 pressurized water reactor fuel assemblies to be qualified for storage in the HI-STORM 100 cask system; a change in the fuel storage locations in the MPC-32 for fuel with APSRAs and in the fuel storage locations in the MPC-24, MPC-24E, and the MPC-32 for fuel with CRAs, RCCAs, and CEAs; elimination of the restriction that fuel debris can only be loaded into the MPC-24EF, MPC-32F, MPC-68F, and MPC-68FF canisters; introduction of a requirement that all MPC confinement boundary components and any MPC components exposed to spent fuel pool water or the ambient environment be made of stainless steel or, for MPC internals, neutron absorber or aluminum; the addition of a threshold heat load below which operation of the SCS would not be required and modification of the design criteria to simplify the system; minor editorial changes to include clarification of the description of anchored casks, correction of typographical/editorial errors, clarification of the definitions of loading operations, storage operations, transport operations, unloading operations, cask loading facility, and transfer cask in various locations throughout the CoC and FSAR; and modification of the definition of non-fuel hardware to include the individual parts of the items defined as non-fuel hardware.

The environmental assessment and finding of no significant impact on which this determination is based are

available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail jmm2@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150-0132, 10 CFR Part 72.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On December 30, 2004, the certificate holder, Holtec, submitted an application to the NRC that requested an amendment to CoC No. 1014. The amendment principally included changes to increase the design basis maximum decay heat loads of the HI-STORM 100 cask system and add a new underground storage configuration, designated the HI-STORM 100U, to the CoC. On November 29, 2006, Holtec withdrew the portion of the application that would have added the HI-STORM 100U to the CoC. The application, as modified on December 22, 2006 (Revision 2), and as supplemented on March 20, 2007, March 30, 2007, May 4,

2007, May 22, 2007, June 15, 2007, July 17, 2007, and September 6, 2007, requested changes to the CoC, the TS, and the FSAR to modify the HI-STORM 100 cask system.

Specifically, the proposed changes included deletion of the requirement to perform thermal validation tests on thermal systems; an increase in the design basis maximum decay heat loads, namely, to 34 kW for uniform loading and 36.9 kW for regionalized loading, and introduction of a new decay heat regionalized scheme; increase in the maximum fuel assembly weight for BWR fuel in the MPC-68 from 700 to 730 pounds; an increase in the maximum fuel assembly weight of up to 1,720 pounds for assemblies not requiring spacers, otherwise 1,680 pounds; changes to the assembly characteristics of 16x16 pressurized water reactor fuel assemblies to be qualified for storage in the HI-STORM 100 cask system; a change in the fuel storage locations in the MPC-32 for fuel with APSRAs and in the fuel storage locations in the MPC-24, MPC-24E, and the MPC-32 for fuel with CRAs, RCCAs, and CEAs; elimination of the restriction that fuel debris can only be loaded into the MPC-24EF, MPC-32F, MPC-68F, and MPC-68FF canisters; introduction of a requirement that all MPC confinement boundary components and any MPC components exposed to spent fuel pool water or the ambient environment be made of stainless steel or, for MPC internals, neutron absorber or aluminum; the addition of a threshold heat load below which operation of the SCS would not be required and modification of the design criteria to simplify the system; minor editorial changes to include clarification of the description of anchored casks, correction of typographical/editorial errors, clarification of the definitions of loading operations, storage operations, transport operations, unloading operations, cask loading facility, and transfer cask in various locations throughout the CoC and the FSAR; and modification of the definition of non-fuel hardware to include the individual parts of the items defined as non-fuel hardware.

The alternative to this action is to withhold approval of Amendment No. 5 and to require any Part 72 general licensee, seeking to load spent fuel into HI-STORM 100 casks under the changes described in Amendment No. 5, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request,

thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec. These entities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, 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, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ 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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C.

552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

**PART 72—LICENSING
REQUIREMENTS FOR THE
INDEPENDENT STORAGE OF SPENT
NUCLEAR FUEL, HIGH-LEVEL
RADIOACTIVE WASTE, AND
REACTOR-RELATED GREATER THAN
CLASS C WASTE**

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 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). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: March 17, 2008.

SAR Submitted by: Holtec International.
SAR Title: Final Safety Analysis Report
for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 11th day of December, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–25403 Filed 12–28–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30585; Amdt. No. 3249]

**Standard Instrument Approach
Procedures, and Takeoff Minimums
and Obstacle Departure Procedures;
Miscellaneous Amendments**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 31, 2007. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW.,
Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 14, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 17 JAN 2008

Macon, GA, Macon Downtown, LOC RWY 10, Amdt 6A

Effective 14 FEB 2008

Andalusia/OPP, AL, South Alabama Rgnl at Bill Benton Field, RNAV (GPS) RWY 11, Amdt 1B

Andalusia/OPP, AL, South Alabama Rgnl at Bill Benton Field, RNAV (GPS) RWY 29, Amdt 1C

Page, AZ, Page Muni, RNAV (GPS) RWY 15, Orig

Page, AZ, Page Muni, RNAV (GPS) RWY 33, Orig

Page, AZ, Page Muni, GPS RWY 15, Orig-A, (CANCELLED)

Page, AZ, Page Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Fort Myers, FL, Southwest Florida Intl, ILS OR LOC RWY 6, Amdt 6

West Palm Beach, FL, Palm Beach Intl, ILS OR LOC RWY 27R, Amdt 2

Blackfoot, ID, McCarley Field, RNAV (GPS)-A, Orig

Blackfoot, ID, McCarley Field, RNAV (GPS)-B, Orig

Blackfoot, ID, McCarley Field, VOR/DME-C, Orig

Blackfoot, ID, McCarley Field, RNAV (GPS) RWY 1, Orig, (CANCELLED)

Blackfoot, ID, McCarley Field, RNAV (GPS) RWY 19, Orig, (CANCELLED)

Blackfoot, ID, McCarley Field, VOR/DME RWY 1, Orig, (CANCELLED)

Greencastle, IN, Putnam County, RNAV (GPS) RWY 18, Amdt 1

Greencastle, IN, Putnam County, RNAV (GPS) RWY 36, Amdt 1

Greencastle, IN, Putnam County, Takeoff Minimums and Obstacle DP, Orig

Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 5L, ILS RWY 5L (CAT II), ILS RWY 5L (CAT III), Amdt 3

Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 5R, ILS 5R (CAT II), ILS RWY 5R (CAT III), Amdt 5

Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 23L, Amdt 5

Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 23R, Amdt 3

Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 5L, Amdt 1

Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 5R, Amdt 1

Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 23L, Amdt 1

Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 23R, Amdt 1

Valparaiso, IN, Porter County Muni, RNAV (GPS) RWY 9, Orig

Valparaiso, IN, Porter County Muni, RNAV (GPS) RWY 18, Orig

Valparaiso, IN, Porter County Muni, RNAV (GPS) RWY 27, Orig

Valparaiso, IN, Porter County Muni, GPS RWY 9, Amdt 1, (CANCELLED)

Valparaiso, IN, Porter County Muni, GPS RWY 27, Orig, (CANCELLED)

Valparaiso, IN, Porter County Muni, Takeoff Minimums and Obstacle DP, Orig

Boyne Falls, MI, Boyne Mountain, RNAV (GPS) RWY 17, Orig

Boyne Falls, MI, Boyne Mountain, RNAV (GPS) RWY 35, Orig

Boyne Falls, MI, Boyne Mountain, NDB OR GPS-A, Amdt 6A, (CANCELLED)

Plymouth, MI, Canton-Plymouth-Mettetal, RNAV (GPS) RWY 18, Orig

Plymouth, MI, Canton-Plymouth-Mettetal, VOR-A, Amdt 12

Sturgis, MI, Kirsch Muni, RNAV (GPS) RWY 18, Orig

Sturgis, MI, Kirsch Muni, GPS RWY 18, Orig, (CANCELLED)

Hinckley, MN, Field of Dreams, RNAV (GPS) RWY 6, Orig

Hinckley, MN, Field of Dreams, RNAV (GPS) RWY 24, Orig

Hinckley, MN, Field of Dreams, Takeoff Minimums and Obstacle DP, Orig

Minneapolis, MN, Flying Cloud, ILS OR LOC RWY 10R, Amdt 2C

Morris, MN, Morris Muni-Charlie Schmidt Fld, RNAV (GPS) RWY 32, Orig

Morris, MN, Morris Muni-Charlie Schmidt Fld, VOR RWY 32, Amdt 5

Morris, MN, Morris Muni-Charlie Schmidt Fld, GPS RWY 32, Orig, (CANCELLED)

Morris, MN, Morris Muni-Charlie Schmidt Fld, Takeoff Minimums and Obstacle DP, Orig

Pipestone, MN, Pipestone Muni, RNAV (GPS) RWY 18, Orig

Pipestone, MN, Pipestone Muni, RNAV (GPS) RWY 36, Orig

Pipestone, MN, Pipestone Muni, NDB RWY 36, Amdt 7

Pipestone, MN, Pipestone Muni, Takeoff Minimums and Obstacle DP, Orig
Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 24R, Amdt 7
Bend, OR, Bend Muni, RNAV (GPS) Y RWY 16, Amdt 1A
Bend, OR, Bend Muni, RNAV (GPS) Z RWY 16, Orig
Bend, OR, Bend Muni, RNAV (GPS) RWY 34, Orig
Hartsville, SC, Hartsville Regional, Takeoff Minimums and Obstacle DP, Orig
Bremerton, WA, Bremerton National, ILS OR LOC RWY 19, Amdt 15
Bremerton, WA, Bremerton National, RNAV (GPS) RWY 1, Orig
Bremerton, WA, Bremerton National, RNAV (GPS) RWY 19, Orig
Bremerton, WA, Bremerton National, GPS RWY 1, Amdt 1A, (CANCELLED)
Bremerton, WA, Bremerton National, Takeoff Minimums and Obstacle DP, Amdt 3
Seattle, WA, Boeing Field/King County Intl, RNAV (GPS) Y RWY 13R, Orig-B
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 19, Amdt 2
Wausau, WI, Wausau Downtown, RNAV (GPS) RWY 12, Orig
Wausau, WI, Wausau Downtown, VOR/DME OR GPS RWY 12, Amdt 3, (CANCELLED)

Effective 13 MAR 2008

Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, Takeoff Minimums and Obstacle DP, Amdt 8

Effective 10 APR 2008

Ionia, MI, Ionia County, VOR-A, Amdt 1

[FR Doc. E7-24992 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 110]

Staff Accounting Bulletin No. 110

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin ("SAB") expresses the views of the staff regarding the use of a "simplified" method, as discussed in SAB No. 107 ("SAB 107"), in developing an estimate of expected term of "plain vanilla" share options in accordance with Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*. In particular, the staff indicated in SAB 107 that it will accept a company's election to use the simplified method, regardless of whether the company has sufficient information to make more refined

estimates of expected term. At the time SAB 107 was issued, the staff believed that more detailed external information about employee exercise behavior (e.g., employee exercise patterns by industry and/or other categories of companies) would, over time, become readily available to companies. Therefore, the staff stated in SAB 107 that it would not expect a company to use the simplified method for share option grants after December 31, 2007. The staff understands that such detailed information about employee exercise behavior may not be widely available by December 31, 2007. Accordingly, the staff will continue to accept, under certain circumstances, the use of the simplified method beyond December 31, 2007.

DATES: Effective December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Sandie E. Kim or Mark J. Barrysmith, Office of the Chief Accountant (202) 551-5300, or Craig C. Olinger, Division of Corporation Finance (202) 551-3400, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: December 21, 2007.

Florence Harmon,
Deputy Secretary.

PART 211—[AMENDED]

■ Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 110 to the table found in Subpart B.

Staff Accounting Bulletin No. 110

Effective January 1, 2008, the staff hereby amends and replaces Question 6 of Section D.2 of Topic 14, *Share-Based Payment*, of the Staff Accounting Bulletin Series. Question 6 of Topic 14: D.2 (as amended) expresses the views of the staff regarding the use of a "simplified" method in developing an estimate of expected term of "plain vanilla" share options in accordance with Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*.

Note: The text of SAB 110 will not appear in the Code of Federal Regulations.

TOPIC 14: SHARE-BASED PAYMENT

* * * * *

D. Certain Assumptions Used in Valuation Methods

* * * * *

2. Expected Term

* * * * *

Facts: Company E grants equity share options to its employees that have the following basic characteristics:⁷⁵

- The share options are granted at-the-money;
- Exercisability is conditional only on performing service through the vesting date;⁷⁶
- If an employee terminates service prior to vesting, the employee would forfeit the share options;
- If an employee terminates service after vesting, the employee would have a limited time to exercise the share options (typically 30–90 days); and
- The share options are nontransferable and nonhedgeable.

Company E utilizes the Black-Scholes-Merton closed-form model for valuing its employee share options.

Question 6: As share options with these "plain vanilla" characteristics have been granted in significant quantities by many companies in the past, is the staff aware of any "simple" methodologies that can be used to estimate expected term?

Interpretive Response: As noted above, the staff understands that an entity that is unable to rely on its historical exercise data may find that certain alternative information, such as exercise data relating to employees of other companies, is not easily obtainable. As such, some companies may encounter difficulties in making a refined estimate of expected term.

Accordingly, if a company concludes that its historical share option exercise experience does not provide a reasonable basis upon which to estimate expected term, the staff will accept the following "simplified" method for "plain vanilla" options consistent with those in the fact set above: expected term = ((vesting term + original contractual term) / 2). Assuming a ten year original contractual term and graded vesting over four years (25% of the options in each grant vest annually) for the share options in the fact set described above, the resultant expected term would be 6.25 years.⁷⁷ Academic

⁷⁵ Employee share options with these features are sometimes referred to as "plain vanilla" options.

⁷⁶ In this fact pattern the requisite service period equals the vesting period.

⁷⁷ Calculated as [(1 year vesting term (for the first 25% vested) plus 2 year vesting term (for the

research on the exercise of options issued to executives provides some general support for outcomes that would be produced by the application of this method.⁷⁸

Examples of situations in which the staff believes that it may be appropriate to use this simplified method include the following:

- A company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate expected term due to the limited period of time its equity shares have been publicly traded.
- A company significantly changes the terms of its share option grants or the types of employees that receive share option grants such that its historical exercise data may no longer provide a reasonable basis upon which to estimate expected term.
- A company has or expects to have significant structural changes in its business such that its historical exercise data may no longer provide a reasonable basis upon which to estimate expected term.

The staff understands that a company may have sufficient historical exercise data for some of its share option grants but not for others. In such cases, the staff will accept the use of the simplified method for only some but not all share option grants. The staff also does not believe that it is necessary for a company to consider using a lattice model before it decides that it is eligible to use this simplified method. Further, the staff will not object to the use of this simplified method in periods prior to the time a company's equity shares are traded in a public market.

If a company uses this simplified method, the company should disclose in the notes to its financial statements the

second 25% vested) plus 3 year vesting term (for the third 25% vested) plus 4 year vesting term (for the last 25% vested)] divided by 4 total years of vesting] plus 10 year contractual life] divided by 2; that is, $((1+2+3+4)/4) + 10 / 2 = 6.25$ years.

⁷⁸J. N. Carpenter, "The exercise and valuation of executive stock options," *Journal of Financial Economics*, 1998, pp. 127–158 studies a sample of 40 NYSE and AMEX firms over the period 1979–1994 with share option terms reasonably consistent to the terms presented in the fact set and example. The mean time to exercise after grant was 5.83 years and the median was 6.08 years. The "mean time to exercise" is shorter than expected term since the study's sample included only exercised options. Other research on executive options includes (but is not limited to) J. Carr Bettis; John M. Bizjak; and Michael L. Lemmon, "Exercise behavior, valuation, and the incentive effects of employee stock options," forthcoming in the *Journal of Financial Economics*. One of the few studies on nonexecutive employee options the staff is aware of is S. Huddart, "Patterns of stock option exercise in the United States," in: J. Carpenter and D. Yermack, eds., *Executive Compensation and Shareholder Value: Theory and Evidence* (Kluwer, Boston, MA, 1999), pp. 115–142.

use of the method, the reason why the method was used, the types of share option grants for which the method was used if the method was not used for all share option grants, and the periods for which the method was used if the method was not used in all periods. Companies that have sufficient historical share option exercise experience upon which to estimate expected term may not apply this simplified method. In addition, this simplified method is not intended to be applied as a benchmark in evaluating the appropriateness of more refined estimates of expected term.

Also, as noted above in Question 5, the staff believes that more detailed external information about exercise behavior will, over time, become readily available to companies. As such, the staff does not expect that such a simplified method would be used for share option grants when more relevant detailed information becomes widely available.

[FR Doc. E7–25178 Filed 12–28–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

[Public Notice: 6044]

Card Format Passport; Changes to Passport Fee Schedule

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the proposed rule published on October 17, 2006, and implements certain provisions of Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). The IRTPA provides that United States citizens and nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. The statute requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require virtually all travelers entering the United States to present a passport or other document or combination of documents that are deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship. The legislation also requires that the Department of Homeland Security (DHS) and the Department of State seek to facilitate the frequent travel of those living in border

communities. This final rule takes into account the amendment to section 7209 by the 2007 Department of Homeland Security Appropriations Act calling for the availability of a passport card for land and sea travel between the United States and Canada, Mexico, the Caribbean and Bermuda.

The Administration's proposal to address the remainder of the legislative requirements in section 7209, called the Western Hemisphere Travel Initiative (WHTI), is being addressed in separate rulemakings.

DATES: This rule is effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Consuelo Pachon, Office of Legal Affairs and Law Enforcement Liaison, Bureau of Consular Affairs, 2100 Pennsylvania Avenue, NW., Suite 3000, Washington, DC, telephone number 202–663–2431.

SUPPLEMENTARY INFORMATION: The Department of State published an Advanced Notice of Proposed Rule Making (ANPRM) in September 2005, which received approximately 2,000 comments. Many of these comments from border resident communities expressed a desire for a less expensive and more portable alternative to the traditional passport book. To be responsive to the needs and concerns of the border communities and to facilitate the travel of border community residents, consistent with Section 7209, the Department of State issued a Notice of Proposed Rulemaking (NPRM) in October 2006, at 71 FR 60928, proposing to develop and issue a card format passport as a less expensive and more portable alternative to the passport book. The comment period closed on January 7, 2007. This final rule implements provisions of Section 7209 of the IRTPA, Public Law 108–458, 118 Stat. 3638, 3823 (Dec. 17, 2004), as amended. The Administration's proposal to address the remainder of the legislative requirements of section 7209 is being addressed in separate rulemakings.

The rule was discussed in detail in Public Notice 5558, as were the Department of State's reasons for making the proposals. The Department of State is now promulgating a final rule with limited changes to clarify the proposed rule. Primarily, the final rule explains that the passport card does not need to be signed in order to be valid, whereas the passport book requires a signature to be valid. In addition, it makes clear that those requesting and eligible for a no-fee passport will receive a passport in book form only. The new Passport Card charges are summarized as follows:

9. Passport Card Services:	
(a) Application fee for applicants age 16 or over (including renewals) [Adult Passport Card]	\$20
(b) Application fee for applicants under age 16 [Minor Passport Card]	10
(c) Passport card execution fee, (first time applicants only)	25
Total first time adult	45
Total first time child	35
Total renewal (adult)	20
Total renewal child	10

The Department is making additional changes to the passport regulations at 22 CFR part 51 in a separate rulemaking. Those changes were published in the **Federal Register** on Monday November 19, 2007, will be effective February 1, 2008, and are contained in Public Notice 5991, Vol. 22 **Federal Register** No. 222, pages 64930–64939.

Analysis of Comments

Over 4000 comments were received regarding this proposed rule. Among those submitting comments were: four Members of Congress, Senators Hillary Clinton and Charles Schumer of New York, Senator Patrick Leahy of Vermont, and Representative Louise Slaughter of New York; the governments of Canada and two of its provinces (Manitoba and New Brunswick); a Native American government (Haudenosaunee Confederation, New York); and dozens of city, county, and municipal governments. Also represented are the United States Postal Service (USPS), the Air Transport Association, over two dozen technology companies and privacy interest groups, five tourism interest groups, and three offshore drilling concerns.

The vast majority of the comments were generated from an e-petition launched by Citizens Against Government Waste opposing the choice of technology. Independent of the e-petition, we received an additional 28 comments regarding technology. In addition, over 150 comments voiced opposition to the change in the amount of the passport execution fee. Other key topics include security issues (21), privacy issues (18), and potential negative economic implications, including a decrease in tourism on both sides of the border (14). Only a small number of comments opposed the idea of the passport card itself, and over 20 comments specifically voiced support for the passport card.

Comments not specifically focused on the passport card are not discussed in this rule.

Technology

All four Members of Congress, as well as technology, security, and privacy groups, are concerned with the choice of “vicinity read” radio frequency identification (RFID) technology for the passport card. While the majority of commenters opposed vicinity read technology, there were some commenters who supported the technology. The opinion expressed by many commenters is that vicinity read technology is not as secure as the proximity read technology currently used in the United States e-Passport. In their opinion the use of vicinity read technology could result in the unauthorized reading of information that would lead to identity theft and tracking of United States citizens by terrorists (security groups) and the government (privacy groups). In addition, commenters asserted that employing two different technologies at the same border crossing is redundant, inefficient, and unnecessarily costly. Several comments mention a 2006 Government Accountability Office review of the US-VISIT program, which reported a low read rate using this type of technology and a statement in the report that it should not be used for identification of people, only for the tracking of goods. All four Members of Congress also question the use of RFID vicinity read technology. Two members of Congress expressed concern that the passport card had not received National Institute of Standards and Technology (NIST) certification in accordance with Section 546 of the Homeland Security Appropriations Act of 2007 (Pub. L. 109–295).

The two comments that best represent the overall nature of comments regarding choice of technology come from the private sector. One industry association, whose members produce both vicinity read and proximity read technology, argues that vicinity read RFID technology is inappropriate for implementing a secure card that is used to verify a citizen's identity. A private company that designs, manufactures and markets both vicinity and proximity read technology chips commented that the choice of vicinity read technology could have the unexpected result of compromising the security of our borders while severely impacting the personal privacy of United States citizens. They also questioned whether vicinity read technology would necessarily improve border crossing times.

While State and DHS appreciate the comments received, the vast majority reflected an improper understanding of

the business model that WHTI is designed to meet and how the technology selected would actually be implemented. DHS remains committed to vicinity-read radio frequency identification (RFID) as the most appropriate technological solution to facilitate document processing at land and sea ports-of-entry. Vicinity-read RFID technology should allow CBP officers to quickly obtain information about the border crosser and perform terrorist watch list checks while they are still awaiting a personal inspection and to read multiple cards simultaneously. Therefore, to ensure compatibility and interoperability with the DHS border management system, and to secure significant travel facilitation advantages, the Department of State will produce the passport card utilizing vicinity RFID technology.

The operational concept that this rule promulgates should enable information about a border crosser to be queued while they are awaiting their interviews with the border officers, rather than waiting until they are face to face with the officer to provide their personal information. This approach is designed to substantially reduce wait times at the border, which was the key driver in development of the WHTI passport card business case.

The vicinity RFID electronic chip contains only one item of information—a unique identifying number that has meaning only inside the secure CBP computer system. No other form of personally identifiable information, such as name, date of birth, SSN, place of birth etc., will be electronically stored on the passport card or transmitted through RFID. All personal information will be contained in DHS systems and will only be accessible by authorized personnel through secure networks. Upon receipt of the passport card number, the border crosser's personal information will be downloaded from the CBP system and provided to the CBP officer. The CBP officer will then interview the individual, verify their identities, and determine the appropriate action to take. The WHTI passport card approach was not designed to be an automated system, and the use of vicinity RFID technology in this final rule reflects this reality. Rather, the RFID-based approach allows the CBP officers to do their jobs better and faster.

While the passport card will transmit only the card's unique identifying number, which is meaningless outside the secure CBP computer system, the Department of State and DHS nonetheless take the submitted privacy concerns seriously. All card holders will

also be issued a protective sleeve for the card, which prevents transmission of the card's unique identifying number. Additionally, use of the passport card is not mandatory. Those border crossers that would prefer to use traditional passports may continue to do so.

Many comments also discussed the technology solution in the e-passport, whose business model is vastly different than that of WHTI. In the e-passport case, a different technology solution was selected that enables transfer of actual personal information in a secure, encrypted, manner. The technology solution for e-passports does not meet the business model for the specific WHTI application, so it was not selected.

Section 546 of the Homeland Security Appropriations Act of 2007 (Pub. L. 109-295) requires the National Institute of Standards and Technology (NIST) to certify that "the Departments of Homeland Security and State have selected a card architecture that meets or exceeds ISO security standards and meets or exceeds best available practices for protection of personal identification documents." NIST certified the proposed passport card on May 1, 2007. Both the House and Senate Appropriations Subcommittees on Homeland Security received notice of the certification on May 3, 2007.

Passport Application Fees

A limited number of commenters, most notably Senator Leahy, believe that the passport application fee, not just the execution fee, should be reduced. Senator Leahy also suggests that consideration should be given to waiving all fees to citizens with low incomes.

The collection of passport application and execution fees is required by 22 U.S.C. 214. This section of the law mandates fee exemptions for specified groups, but does not allow the Department to establish an income-based waiver. The possibility of shorter periods of passport validity and less expensive passports for individuals, such as low-income applicants, has been proposed in the past. However, to date, Congress has not promulgated law that would give the Department of State authority to reduce or waive the passport fee for low-income citizens. Thus, a no-fee passport, regardless of format, for low-income citizens is not an option that is legally available.

As established by OMB Circular A-25, fees for government services are to be based on the costs of service, in order to ensure that such services be self-sustaining to the extent possible. Thus, passport application fees are determined

on a cost recovery basis and are intended to recover, to the extent possible, the costs of providing passport adjudication and production as well as consular services to citizen travelers abroad. The Department of State did not include the cost of consular services in determining the cost of the passport card, since travelers using the card are likely to be on cross border trips generally of short duration, and most emergencies would be handled by travelers relying on family members and services in the United States.

Passport Execution Fee

We received comments from dozens of municipal and county governments, as well as the USPS, questioning the reduction of the execution fee from \$30 to \$25. USPS's comments acknowledge the positive relationship it shares with the Department of State and make clear that it will work with the Department to continue to offer passport acceptance services if the execution fee is lowered. USPS suggests that should the fee be lowered, the Department of State, in consultation with USPS, should provide both a more streamlined application process and conduct periodic reviews to ensure that the execution fee covers the cost of service. Comments also requested clarification of exactly when the execution fee is required.

We note that only first-time applicants or those individuals required to appear personally at passport acceptance facilities are required to pay the execution fee. Individuals applying for renewal of a passport by mail, or those who have a passport book and are applying for a passport card, are not required to pay the execution fee.

We also note that in the United States, the largest numbers of first-time passport applications are made by those who appear in person at a local United States Post Office or government office (most often county, township, municipal, or clerk of the court). The execution fee is retained by these designated passport application acceptance facilities to cover the costs of providing this service. We base the fee on a cost of service study designed to reimburse on an average basis, and conduct such studies regularly to ensure their accuracy in recovering relevant costs.

The Department of State is committed to providing a low-cost alternative to the passport book to assist residents of border communities. Based on the considerations expressed in the NPRM, including our cost of service study, the Department of State will reduce the execution fee to \$25.00 for the passport card. The Department of State values its

significant national partnership with USPS and is also committed to working with USPS regarding any implementation issues that may be encountered with establishing this rate for the passport card execution fee. The Department of State is not proposing to lower the execution fee for the passport book at this time. Changes to the passport book fee schedule will be addressed in separate rulemakings.

First Nation Concerns

The Department received one comment from the Haudenosaunee, a Six National Confederacy made up of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations. They expressed concern that the proposed rule would unnecessarily and unintentionally interfere with and undermine the ability of the Haudenosaunee to determine how to document the identity and citizenship of its people. They also expressed concern that the proposed rule would interfere with aboriginal and treaty rights to freely pass the international border without burdensome costly documentation requirements.

These issues will be addressed as part of the final WHTI joint rule making process by DHS and the Department of State. The Department of State is sensitive to the issues of documenting members of all United States Native American Nations. We would like to emphasize that the passport card will be issued on the same basis as the traditional passport book to Native Americans who wish to apply.

Washington State

The Department of Licensing for the State of Washington commented that it strongly believes that enhanced driver's licenses would "better serve the economic and convenience needs" of United States citizens at border crossings.

The Department of State has participated in discussions between DHS and Washington State regarding the development of the Washington State Enhanced Driver's License Project, but is not a partner in the program. DHS has the authority to determine what documents or combination of documents it will deem sufficient to denote citizenship and identity for the purposes of cross border travel. The issue of alternative documentation will be addressed in the final rule implementing the land and sea portion of the Western Hemisphere Travel Initiative.

*Canadian Comments**The Government of Canada*

The Government of Canada submitted official comments encouraging the movement of legitimate travelers across the shared border while still complying with WHTI. However, it expressed concern that unless the public is properly informed, there could be significant disruption to the tourism and service industries as well as to trade between the two countries. The Government of Canada encourages a high-profile outreach campaign regarding WHTI and the release of the passport card. It also urges that the implementation of WHTI be postponed until June 1, 2009, and suggests that the use of the passport card be expanded to the air environment to increase its versatility, thus making it a more attractive option.

The Department of State appreciates the comments expressed by the Government of Canada. For the past year, the Department of State and DHS have conducted an extensive public service campaign to educate the public on the requirements of WHTI. The success of this campaign is evidenced by the surge in passport applications through May 2007. We anticipate that this momentum will continue as we get closer to full implementation.

We note that the passport card, as currently designed and conceived, is for use at land and sea borders only. The passport card will be available to United States citizens nationwide, but its primary purpose is to facilitate the travel of those living in the border region. It is not a globally interoperable document. The Department of State continues to believe that it is a valuable low-cost alternative to the traditional book format passport.

Governments of Manitoba and New Brunswick

The Government of Manitoba recommends (1) a delay in the implementation of WHTI; (2) development and funding for a public awareness campaign; (3) expansion of the trusted traveler and commercial traffic programs; (4) affordable documents; (5) flexibility of documentation, especially for minors under age 16; and, (6) exploration of the use of enhanced drivers' licenses as alternative travel documents provided for under WHTI. The Government of New Brunswick expressed concern about the implementation dates for WHTI and the lack of availability of NEXUS and FAST crossing sites at the Maine-New Brunswick border. They call for launching unspecified required

technologies and infrastructure at all border crossings.

The Department of State welcomes comments from the Canadian provinces and shares their commitment to ensuring safe, affordable and efficient travel across common borders. We note, however, that the comments received are more directed toward the WHTI concept rather than the passport card. We will continue to work with DHS, Canadian provinces and the Canadian central government to assist in the implementation of WHTI and in the introduction of the passport card.

Global Interoperability of the Passport Card

Several comments suggested that the passport card should not be restricted for use only at land borders but should be available for use in the air environment for travel between the United States, Canada, Mexico and the Caribbean.

The passport card was specifically designed to respond to the concerns expressed by border communities in regard to the requirements of WHTI. The passport card is designed specifically to address the unique circumstances of land border crossings and is not intended to be a globally interoperable travel document. Therefore, passport cards will not be designed to meet the International Civil Aviation Organization (ICAO) standards and recommendations for globally interoperable passports.

Because the passport card will be specifically designed to facilitate land and sea border crossings, it is not compatible with the global air environment, which is already set up for passport books. In addition, extending the use of the passport card to the air environment could create confusion with the traveling public should they attempt to use the passport card for travel to a country other than Mexico, Canada or the Caribbean.

Offshore Drilling Concerns

Three offshore drilling concerns suggested that the passport card be made available for return to the United States by helicopter from a mobile offshore drilling unit (MODU).

After careful consideration, the Department of State believes that even a limited use of the passport card in the air environment, such as helicopter travel from a MODU from outside the United States, back to the United States, would not be warranted. Travel of individuals working on a MODU attached to the Outer Continental Shelf is being addressed in the WHTI land and sea rulemaking.

Regulatory Findings*Administrative Procedure Act*

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department of State published a proposed rule and invited and received public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because only individuals can apply for the passport card.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Department of State does not consider the proposed rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to 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. However, the final rule implements Department of State

decisions that require coordination with action taken or planned by another agency, in particular the Department of Homeland Security. Accordingly, the rule has been provided to the Office of Management and Budget (OMB) for review.

Executive Order 13132

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

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 22

Passports and visas.

22 CFR Part 51

Passports.

■ Accordingly, 22 CFR Parts 22 and 51 are amended as follows:

PART 22—[AMENDED]

■ 1. The authority citation for part 22 continues to read as follows:

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

■ 2. Section 22.1 is revised to read as follows:

§ 22.1 Schedule of fees.

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
* * * * *	

9. Passport Card Services:

- (a) Application fee for applicants age 16 or over (including renewals) [Adult Passport Card]. \$20

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(b) Application fee for applicants under age 16 [Minor Passport Card].	10
(c) Execution fee, (first time applicant only) [Passport Card].	25
10. [Reserved].	
* * * * *	

PART 51—PASSPORTS—

■ 3. The authority citation for part 51 is revised to read as follows:

Authority: 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103–317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966–1970 Comp., p. 570; Sec. 1 of Pub. L. 109–210, 120 Stat. 319; Sec. 2 of Pub. L. 109–167, 119 Stat. 3578; Sec. 5 of Pub. L. 109–472, 120 Stat. 3554; Pub. L. 108–447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; Pub. L. 108–458, 118 Stat. 3638, 3823 (Dec. 17, 2004).

■ 4. Amend § 51.3 by adding a new paragraph (d) to read as follows:

§ 51.3 Types of passports.

* * * * *

(d) *Passport card.* A passport card is issued to a national of the United States on the same basis as a regular passport. It is valid only for departure from and entry to the United States through land and sea ports of entry between the United States and Mexico, Canada, the Caribbean and Bermuda. It is not a globally interoperable international travel document.

■ 5. Section 51.4, paragraphs (a) and (b) are revised to read as follows:

§ 51.4 Validity of passports.

(a) *Signature of bearer.* A passport book is valid only when signed by the bearer in the space designated for signature, or, if the bearer is unable to sign, signed by a person with legal authority to sign on his or her behalf. A passport card is valid without the signature of the bearer.

(b) *Period of validity of a regular passport and a passport card.*

(1) A regular passport or passport card issued to an applicant 16 years of age or older is valid for ten years from date of issue unless the Department limits the validity period to a shorter period.

(2) A regular passport or passport card issued to an applicant under 16 years of

age is valid for five years from date of issue unless the Department limits the validity period to a shorter period.

(3) A regular passport for which payment of the fee has been excused is valid for a period of five years from the date issued unless limited by the Department to a shorter period.

* * * * *

■ 6. Section 51.52 is revised to read as follows:

§ 51.52 Exemption from payment of passport fees.

(a) A person who is exempt from the payment of passport fees under this section may obtain a passport book only for no charge. A passport card will not be issued for no charge to the individuals exempt from the payment of passport fees under this section.

(b) The following persons are exempt from payment of passport fees except for the passport execution fee, unless their applications are executed before a federal official, in which case they are also exempt from payment of the passport execution fee:

(1) An officer or employee of the United States traveling on official business and the members of his or her immediate family. The applicant must submit evidence of the official purpose of the travel and, if applicable, authorization for the members of his or her immediate family to accompany or reside with him or her abroad.

(2) An American seaman who requires a passport in connection with his or her duties aboard a United States flag vessel.

(3) A widow, widower, child, parent, brother or sister of a deceased member of the United States Armed Forces proceeding abroad to visit the grave of such service member or to attend a funeral or memorial service for such member.

(4) Other persons whom the Department determines should be exempt from payment of passport fees for compelling circumstances, pursuant to guidance issued by the Department; or

(5) Other categories of persons exempted by law.

Dated: December 21, 2007.

Patrick Kennedy,

*Under Secretary for Management,
Department of State.*

[FR Doc. E7–25422 Filed 12–28–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE**22 CFR Part 41****[Public Notice 6045]****Visas: Documentation of Non-immigrants Under the Immigration and Nationality Act****AGENCY:** Department of State.**ACTION:** Final rule.

SUMMARY: This rule amends 22 CFR Part 41 in order to reflect increased security measures requiring fingerprinting and name checks of all visa applicants, with certain narrow exceptions, and to be consistent with an amendment to the Schedule of Fees for Consular Services including the cost of such checks in fees for non-immigrant and immigrant visas and border crossing cards.

DATES: This final rule becomes effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT:

Barbara J. Kennedy, Legislation and Regulations Division, Visa Services, Department of State; 2401 E Street, NW., Room L-603, Washington, DC 20520-0106, (202) 663-1206, e-mail KennedyBJ@State.gov.

SUPPLEMENTARY INFORMATION:**Background***What Is the Authority for This Action?*

The Secretary of State is charged with the administration and enforcement of the provisions of the Immigration and Nationality Act (INA) and all other immigration and nationality laws relating to, *inter alia*, the powers, duties and functions of consular officers. 8 U.S.C. 1104. The Secretary is also authorized to establish regulations necessary for carrying out these duties. *Id.* In 2004, Congress found that existing procedures allowed many individuals to enter the United States showing only minimal identification and that greater security measures were necessary to protect the United States from terrorist attacks. Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108-458 (Dec. 17, 2004), section 7209. In order to more effectively carry out its duties to administer and enforce the INA, and to respond to the congressional mandate in the IRTPA to increase the nation's border security, the Department has begun performing fingerprint and name checks on all visa applicants except those falling within a narrow range of exceptions. Fingerprints are now required of all visa applicants except those under 14 years of age or over 79 years of age, and certain diplomats and officials. The expansion of fingerprint

and name checks to include the vast majority of visa applicants is a critical component of the Department's efforts to enhance the nation's border security.

Why is the Department Amending Part 41 at This Time?

The deletion of Part 22, section 41.105(b) is necessary at this time because the Department is conducting fingerprint checks and name checks on all visa applicants who do not fall within the exceptions noted above, and because beginning on January 1, 2008, the cost of such checks will be included in visa fees, including the fees for non-immigrant visas. In contrast, section 41.105(b) prescribes fingerprint and name checks of non-immigrant visa applicants only in certain circumstances, and provides that a fee for fingerprint checks will only be charged when a name check indicates the possibility of a criminal history. 22 CFR 41.105(b) should be deleted in order to ensure that the Department's regulations concerning fingerprint and name checks of non-immigrant visa applicants are consistent. In order to prevent any confusion as to when fingerprint and name checks are required of non-immigrant visa applicants and what fees for these services must be paid by visa applicants, the provision must be deleted effective January 1, 2008, simultaneously with the effective date of the amendment to the Schedule of Fees for Consular Services.

Regulatory Findings*Administrative Procedure Act*

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

*Regulatory Flexibility Act/Executive Order 13272:**Small Business.*

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, this rule is exempt from review under E.O. 12866. The Department has nevertheless reviewed it to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Orders 12372 and 13132: Federalism

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

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 41

Visas, Nonimmigrants, Passports and Visas, Fees, Surcharge.

■ Accordingly, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

■ 1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

■ 2. Section 41.105 is amended by removing paragraph (b).

Dated: December 21, 2007.

Maura Harty,

*Assistant Secretary for Consular Affairs,
Department of State.*

[FR Doc. E7–25417 Filed 12–28–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9374]

RIN 1545–BF09

Nuclear Decommissioning Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and Temporary regulation.

SUMMARY: This document contains final and temporary regulations under section 468A of the Internal Revenue Code relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants. The temporary regulations affect most taxpayers that own an interest in a nuclear power plant and reflect recent statutory changes. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

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

Applicability Dates: For dates of applicability, see § 1.468A–9T.

FOR FURTHER INFORMATION CONTACT: Patrick S. Kirwan, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been approved by the Office of Management and Budget on a

temporary basis under control number 1545–2091 and pending receipt and review of comments, may be approved for a period of three years. Responses to these collections of information are required to obtain a tax benefit.

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

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

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

Background

This document contains amendments to 26 CFR part 1 providing temporary regulations under section 468A of the Internal Revenue Code of 1986 (Code). Section 468A was amended by section 1310 of the Energy Policy Act of 2005 (the Energy Policy Act), Public Law 109–58 (119 Stat. 594).

Explanation of Provisions

Section 468A provides a deduction for amounts contributed to a qualified nuclear decommissioning reserve fund. Under prior law, the deduction was limited to the lesser of the amount included in the utility's cost of service for ratemaking purposes or the ruling amount. As a result, only regulated utilities could take advantage of section 468A. The Energy Policy Act amendment of section 468A eliminated the cost-of-service limitation. Accordingly, decommissioning costs of an unregulated nuclear power plant may now be funded by deductible contributions to a qualified nuclear decommissioning fund.

Under prior law, deductible contributions were also limited to the amount necessary to fund the plant's post-1983 nuclear decommissioning costs (determined as if decommissioning costs accrued ratably over the estimated useful life of the plant). The Energy Policy Act amendment of section 468A also eliminated this limitation. Accordingly, taxpayers may now fund the entire cost

of decommissioning a plant through a qualified nuclear decommissioning fund.

A plant's pre-1984 nuclear decommissioning costs can be funded by increasing the annual deductible contributions over the remaining useful life of the plant. In addition, however, the Energy Policy Act amendments to section 468A permit more rapid funding of the pre-1984 costs. A taxpayer may contribute, in a single taxable year, all or any portion of the amount needed to fund pre-1984 nuclear decommissioning costs that have not been previously funded (a "special transfer"). A special transfer is not deductible in full in the year the contribution is made. Instead, the deduction is allowed ratably over the remaining useful life of the nuclear plant. Gain or loss is not recognized on any special transfer, and the transferred assets have a carryover basis.

Section 468A allows a deduction only if the Internal Revenue Service has given the taxpayer a schedule of ruling amounts (that is, a schedule specifying the maximum deductible contribution that can be made in each taxable year). The Energy Policy Act amendments provide that the taxpayer must obtain a new schedule of ruling amounts when the Nuclear Regulatory Commission (NRC) extends the operating license of the plant.

Useful Life

The schedule of ruling amounts may not provide for more rapid than level funding over the estimated useful life of the nuclear power plant. Also, as noted above, deductions for special transfers are allowed ratably over the plant's remaining useful life. Under the current regulations, the useful life of the plant begins on the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations, and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. The proposed and temporary regulations retain this general framework for plants that were regulated by a public utility commission (PUC) before January 1, 2006, and permit the use of any reasonable method to determine the end of the estimated useful life for all other plants. The current regulations require adjustments to the estimated useful life to reflect changes in PUC assumptions regarding useful life. The proposed and temporary regulations eliminate this requirement. Taxpayers will, however, be permitted

to establish that a change in the plant's useful life is appropriate and may use the assumptions used in the most recent ratemaking proceeding as support for such a change.

Previously Excluded Amount

Section 468A(f) provides that the amount of the special transfer with respect to a nuclear power plant may not exceed "the present value of the portion of the total nuclear decommissioning costs with respect to such nuclear power plant previously excluded for such nuclear power plant under section 468A(d)(2)(A) as in effect immediately before the date of the enactment of [the Energy Policy Act]." The legislative history (footnote 15 of H. Rep. 109-45) provides the following explanation of this rule:

For example, if \$100 is the present value of the total decommissioning costs of a nuclear powerplant, and if under present law the qualified fund is only permitted to accumulate \$75 of decommissioning costs over such plant's estimated life (because the qualified fund was not in existence during 25 percent of the useful life of the nuclear powerplant), a taxpayer could contribute \$25 to the qualified fund under this component of the provision.

The proposed and temporary regulations permit taxpayers to compute the maximum special transfer amount by (i) calculating the present value of the future decommissioning liability and (ii) reducing that present value by the amount of decommissioning costs that, under the law in effect before the enactment of the Energy Policy Act, could have been funded through a qualified fund. For this purpose, the amount of decommissioning costs that could have been funded through a qualified fund is determined by multiplying the present value of the future decommissioning liability by the qualifying percentage that, under the law in effect before the enactment of the Energy Policy Act, was used to determine the amount of decommissioning costs that could be funded through a qualified fund.

Special Transfers of Property

Taxpayers may make special transfers of property other than cash. The legislative history (footnote 16 of H. Rep. 109-45) includes the following discussion relating to such transfers:

A taxpayer recognizes no gain or loss on the contribution of property to a qualified fund under this special rule. The qualified fund will take a transferred (carryover) basis in such property. Correspondingly, a taxpayer's deduction (over the estimated life of the powerplant) is to be based on the adjusted tax basis of the property contributed

rather than the fair market value of such property.

Although the deduction for contributed property is limited to the adjusted basis of the property, the regulations provide that the limitation on the amount of the special transfer is applied using the fair market value of the contributed property rather than its basis. This rule is necessary to prevent overfunding of the qualified fund.

Transfers to Related Persons

Although deductions for special transfers are generally allowed ratably over the plant's remaining useful life, a special rule applies if the fund is transferred before the end of the remaining useful life. In that case, the entire remaining deduction for the special transfer is allowed in the year the fund is transferred. This acceleration allows the taxpayer to close its books on the asset. We have been asked to provide guidance on whether this acceleration would apply in the case of a transaction that qualifies for nonrecognition treatment (for example, under section 351). The IRS and Treasury believe that the acceleration applies but provides an inappropriate benefit to a taxpayer that directly or indirectly retains an interest in the plant. Consequently, in the case of a transfer of a qualified nuclear decommissioning fund to a related person, the regulations provide that the transferee's ruling amounts will be adjusted to the extent necessary to offset the inappropriate benefit provided by the acceleration of deductions.

Special Transfers in Multiple Taxable Years

It may be necessary (for example, if assets are held in funds with penalties for early withdrawal) for taxpayers to spread the special transfer across more than one taxable year. The regulations provide that contributions in multiple years are permissible and include an example describing a special transfer spread across multiple years.

New Schedules of Ruling Amounts

Under prior law, only regulated utilities could take advantage of section 468A and the IRS could rely upon the PUC with regulatory jurisdiction over the taxpayer to ensure that accurate and reasonable assumptions were used in calculating decommissioning cost of service for purposes of rate orders. Accordingly, the existing regulations require the taxpayer to use the PUC's assumptions in calculating the taxpayer's schedule of ruling amounts and to submit as part of the request for a schedule of ruling amounts "a

description of the assumptions, estimates, and other factors that were used" by "each public utility commission that has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes."

Under current law, any taxpayer with an interest in a nuclear power plant may maintain a qualified nuclear decommissioning fund with respect to that interest, without regard to whether the taxpayer is, or ever has been, regulated by a PUC. The temporary and proposed regulations provide that, in the case of a plant that is currently subject to PUC regulation, the assumptions used by the PUC in determining decommissioning costs for the plant must be provided in the submission of the proposed schedule of ruling amounts. The taxpayer submitting the proposed schedule is not required to use the PUC's assumptions in calculating the proposed schedule, but is required to base the schedule upon reasonable assumptions.

Under the temporary and proposed regulations, the electing taxpayer bears the burden of demonstrating that the requested schedule is based upon reasonable assumptions and is consistent with the principles and provisions of the applicable regulatory provisions. A taxpayer that remains subject to the ratemaking jurisdiction of a PUC and that calculates its schedule of ruling amounts using the assumptions described by the PUC in its most recent rate order will generally satisfy this burden of proof. In addition, a taxpayer that owns an interest in a deregulated nuclear plant may submit assumptions used by a PUC that formerly had regulatory jurisdiction over the plant as support for the assumptions used in calculating the taxpayer's proposed schedule of ruling amounts, with the understanding that the PUC assumptions may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, is an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. On the other hand, consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof.

Additional Provisions and Changes

The regulations follow the statute in requiring taxpayers to request a new

schedule of ruling amounts in any taxable year that the NRC extends the operating license for the plant. In addition, the regulations provide that a separate schedule of ruling amounts (a "schedule of deduction amounts") must be obtained from the Secretary before deductions may be claimed with respect to a special transfer.

Finally, many conforming amendments have been made to the existing regulations reflecting the elimination of the cost-of-service limitation and the post-1983 decommissioning cost limitation, and to eliminate obsolete provisions.

Effective/Applicability Date

The temporary regulations are applicable on December 31, 2007, and apply with respect to taxable years ending on or after such date. During the period between January 1, 2006, and December 31, 2007, a taxpayer may use any reasonable method consistent with the principles and provisions of section 468A to determine the schedule of ruling amounts or the schedule of deduction amounts. A taxpayer may apply the provisions of §§ 1.468A-1T through 1.468A-8T to taxable years ending on or after January 1, 2006, and before December 31, 2007, provided that the taxpayer applies all provisions in §§ 1.468A-1T through 1.468A-8T to the taxable year.

Special Analyses

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

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.468A-5T also issued under 26 U.S.C. 468A(e)(5). * * *

§§ 1.468A-0 through 1.468A-8 [Removed]

■ **Par. 2.** Sections 1.468A-0 through 1.468A-8 are removed.

■ **Par. 3.** Sections 1.468A-0T through 1.468A-9T are added to read as follows:

§ 1.468A-0T Nuclear decommissioning costs; table of contents.

This section lists the paragraphs contained in §§ 1.468A-1T through 1.468A-9T.

§ 1.468A-1T Nuclear decommissioning costs; general rules (temporary).

- (a) Introduction.
- (b) Definitions.
- (c) Special rules applicable to certain experimental nuclear facilities.

§ 1.468A-2T Treatment of electing taxpayer (temporary).

- (a) In general.
- (b) Limitation on payments to a nuclear decommissioning fund.
 - (1) In general.
 - (2) Excess contributions not deductible.
 - (c) Deemed payment rules.
 - (d) Treatment of distributions.
 - (1) In general.
 - (2) Exceptions to inclusion in gross income.
 - (i) Payment of administrative costs and incidental expenses.
 - (ii) Withdrawals of excess contributions.
 - (iii) Actual distributions of amounts included in gross income as deemed distributions.
 - (e) Deduction when economic performance occurs.

§ 1.468A-3T Ruling amount (temporary).

- (a) In general.
- (b) Level funding limitation.
- (c) Funding period.

(d) Decommissioning costs allocable to a fund.

- (1) General rule.
- (2) Total estimated cost of decommissioning.
- (3) Taxpayer's share.
- (e) Manner of requesting schedule of ruling amounts.
 - (1) In general.
 - (2) Information required.
 - (3) Administrative procedures.
 - (f) Review and revision of schedule of ruling amounts.
 - (1) Mandatory review.
 - (2) Elective review.
 - (3) Determination of revised schedule of ruling amounts.
 - (g) Special rule permitting payments to a nuclear decommissioning fund before receipt of an initial or revised ruling amount applicable to a taxable year.

§ 1.468A-4T Treatment of nuclear decommissioning fund (temporary).

- (a) In general.
- (b) Modified gross income.
- (c) Special rules.
 - (1) Period for computation of modified gross income.
 - (2) Gain or loss upon distribution of property by a fund.
 - (3) Denial of credits against tax.
 - (4) Other corporate taxes inapplicable.
 - (d) Treatment as corporation for purposes of subtitle F.

§ 1.468A-5T Nuclear decommissioning fund—miscellaneous provisions (temporary).

- (a) Qualification requirements.
 - (1) In general.
 - (2) Limitation on contributions.
 - (3) Limitation on use of fund.
 - (i) In general.
 - (ii) Definition of administrative costs and expenses.
 - (4) Trust provisions.
 - (b) Prohibitions against self-dealing.
 - (1) In general.
 - (2) Self-dealing defined.
 - (3) Disqualified person defined.
 - (c) Disqualification of nuclear decommissioning fund.
 - (1) In general.
 - (2) Exception to disqualification.
 - (i) In general.
 - (ii) Excess contribution defined.
 - (iii) Taxation of income attributable to an excess contribution.
 - (3) Effect of disqualification.
 - (4) Further effects of disqualification.
 - (d) Termination of nuclear decommissioning fund upon substantial completion of decommissioning.
 - (1) In general.
 - (2) Additional rules.
 - (3) Substantial completion of decommissioning defined.

§ 1.468A-6T Disposition of an interest in a nuclear power plant (temporary).

- (a) In general.
- (b) Requirements.
- (c) Tax consequences.
 - (1) The transferor and its Fund.
 - (2) The transferee and its Fund.
 - (3) Basis.
- (d) Determination of proportionate amount.
- (e) Calculation of schedule of ruling amounts and schedule of deduction amounts for dispositions described in this section.
 - (1) Transferor.
 - (i) Taxable year of disposition.
 - (ii) Taxable years after the disposition.
 - (2) Transferee.
 - (i) Taxable year of disposition.
 - (ii) Taxable years after the disposition.
 - (3) Example.
 - (f) Anti-abuse provision.

§ 1.468A-7T Manner of and time for making election (temporary).

- (a) In general.
- (b) Required information.

§ 1.468A-8T Special transfers to qualified funds pursuant to section 468A(f) (temporary).

- (a) General rule.
 - (1) In general.
 - (2) Previously excluded amount.
 - (3) Transfers in multiple years.
 - (4) Contributions of property.
- (b) Deduction for amounts transferred.
 - (1) In general.
 - (2) Denial of deduction for previously deducted amounts.
- (3) Transfers of qualified nuclear decommissioning funds.
 - (4) Special rules.
 - (i) Gain or loss not recognized on transfers to fund.
 - (ii) Transfers of appreciated property to fund.
 - (c) New ruling amount required.
 - (1) In general.
 - (2) Transfers in multiple taxable years.
 - (d) Manner of requesting schedule of deduction amounts.
 - (1) In general.
 - (2) Information required.
 - (3) Statement required.
 - (4) Administrative procedures.

§ 1.468A-9T Effective/applicability date and transitional rules (temporary).

- (a) Effective date.
- (b) Transitional rules.
 - (1) Schedules of ruling amounts based on prior regulations.
 - (2) Nuclear decommissioning fund qualification requirements.
 - (3) Use of formula method.

§ 1.468A-1T Nuclear decommissioning costs; general rules (temporary).

- (a) *Introduction.* Section 468A provides an elective method for taking

into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7T is allowed a deduction (as determined under § 1.468A-2T) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

(b) *Definitions.* The following terms are defined for purposes of section 468A and the regulations:

(1) The term *eligible taxpayer* means any taxpayer that possesses a qualifying interest in a nuclear power plant (including a nuclear power plant that is under construction).

(2) The term *qualifying interest* means—

- (i) A direct ownership interest; and
- (ii) A leasehold interest in any portion of a nuclear power plant if—

(A) The holder of the leasehold interest is primarily liable under Federal or State law for decommissioning such portion of the nuclear power plant; and

(B) No other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

(3) A *direct ownership interest* includes an interest held as a tenant in common or joint tenant, but does not include stock in a corporation that owns a nuclear power plant or an interest in a partnership that owns a nuclear power plant. Thus, in the case of a partnership that owns a nuclear power plant, the election under section 468A must be made by the partnership and not by the partners. In the case of an unincorporated organization described in § 1.761-2(a)(3) that elects under section 761(a) to be excluded from the application of subchapter K, each taxpayer that is a co-owner of the nuclear power plant is eligible to make a separate election under section 468A.

(4) The terms *nuclear decommissioning fund* and *qualified nuclear decommissioning fund* mean a fund that satisfies the requirements of § 1.468A-5T. The term *nonqualified fund* means a fund that does not satisfy those requirements.

(5) The term *nuclear power plant* means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy. Each unit (that is, nuclear reactor) located on a multi-unit

site is a separate nuclear power plant. The term *nuclear power plant* also includes the portion of the common facilities of a multi-unit site allocable to a unit on that site.

(6) The term *nuclear decommissioning costs* or *decommissioning costs* means all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425). An expense is otherwise deductible for purposes of this paragraph (b)(6) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

(7) The term *public utility commission* means any State or political subdivision thereof, any agency, instrumentality or judicial body of the United States, or any judicial body, commission or other similar body of the District of Columbia or of any State or any political subdivision thereof that establishes or approves rates for the furnishing or sale of electric energy.

(8) The term *ratemaking proceeding* means any proceeding before a public utility commission in which rates for the furnishing or sale of electric energy are established or approved. Such term includes a generic proceeding that applies to two or more taxpayers that are subject to the jurisdiction of a single public utility commission.

(9) The term *special transfer* means any transfer of funds to a qualified nuclear decommissioning fund pursuant to § 1.468A-8T.

(c) *Special rules applicable to certain experimental nuclear facilities.* (1) The owner of a qualifying interest in an experimental nuclear facility possesses a qualifying interest in a nuclear power plant for purposes of paragraph (b) of this section if such person is engaged in the trade or business of the furnishing or sale of electric energy.

(2) An owner of stock in a corporation that owns an experimental nuclear facility possesses a qualifying interest in a nuclear power plant for purposes of paragraph (b)(1) of this section if—

(i) Such stockholder satisfies the conditions of paragraph (c)(1) of this section; and

(ii) The corporation that directly owns the facility is not engaged in the trade or business of the furnishing or sale of electric energy.

(3) For purposes of this paragraph (c), an experimental nuclear facility is a nuclear power reactor that is used predominantly for the purpose of conducting experimentation and research.

§ 1.468A-2T Treatment of electing taxpayer (temporary).

(a) *In general.* An eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7T (an electing taxpayer) is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment as provided in paragraph (c) of this section) to a nuclear decommissioning fund and for any taxable year in which a deduction is allowed for a special transfer described in § 1.468A-8T. The amount of the deduction for any taxable year equals the total amount of cash payments made (or deemed made) by the electing taxpayer to a nuclear decommissioning fund (or nuclear decommissioning funds) during such taxable year under this section, plus any amount allowable as a deduction in that taxable year for a special transfer described in § 1.468A-8T. The amount of a special transfer permitted under § 1.468A-8T is not treated as a cash payment for purposes of this paragraph (a), and a taxpayer making a special transfer is allowed a ratable deduction in each taxable year during the remaining useful life of the nuclear power plant for the special transfer. A payment may not be made (or deemed made) to a nuclear decommissioning fund before the first taxable year in which all of the following conditions are satisfied:

(1) The construction of the nuclear power plant to which the nuclear decommissioning fund relates has commenced.

(2) A ruling amount is applicable to the nuclear decommissioning fund (see § 1.468A-3T).

(b) *Limitation on payments to a nuclear decommissioning fund—(1) In general.* For purposes of paragraph (a) of this section, the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund

under paragraph (a) of this section during any taxable year shall not exceed the ruling amount applicable to the nuclear decommissioning fund for such taxable year (as determined under § 1.468A-3T).

(2) *Excess contributions not deductible.* If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of paragraph (b)(1) of this section, the excess is not deductible by the electing taxpayer. In addition, see § 1.468A-5T(c) for rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of paragraph (b)(1) of this section.

(3) *Special transfer disregarded.* The amount of a special transfer permitted under § 1.468A-8T is not treated as a cash payment for purposes of this paragraph (b).

(c) *Deemed payment rules.* (1) The amount of any cash payment made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the deemed payment deadline date) shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year (see § 1.468A-7T(b)(4)(iv) for rules relating to such designation).

(2) The amount of any cash payment made by a customer of an electing taxpayer to a nuclear decommissioning fund of such electing taxpayer shall be deemed made by the electing taxpayer if the amount is included in the gross income of the electing taxpayer in the manner prescribed by section 88 and § 1.88-1.

(d) *Treatment of distributions—(1) In general.* Except as otherwise provided in paragraph (d)(2) of this section, the amount of any actual or deemed distribution from a nuclear decommissioning fund shall be included in the gross income of the electing taxpayer for the taxable year in which the distribution occurs. The amount of any distribution of property equals the fair market value of the property on the date of the distribution. See § 1.468A-5T(c) and (d) for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disqualification or termination of the fund. A distribution from a nuclear decommissioning fund

shall include an expenditure from the fund or the use of the fund's assets—

(i) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the fund relates; and

(ii) To pay administrative costs and other incidental expenses of the fund.

(2) *Exceptions to inclusion in gross income—(i) Payment of administrative costs and incidental expenses.* The amount of any payment by a nuclear decommissioning fund for administrative costs or other incidental expenses of such fund (as defined in § 1.468A-5T(a)(3)(ii)) shall not be included in the gross income of the electing taxpayer unless such amount is paid to the electing taxpayer (in which case the amount of the payment is included in the gross income of the electing taxpayer under section 61).

(ii) *Withdrawals of excess contributions.* The amount of a withdrawal of an excess contribution (as defined in § 1.468A-5T(c)(2)(ii)) by an electing taxpayer pursuant to the rules of § 1.468A-5T(c)(2) shall not be included in the gross income of the electing taxpayer. See paragraph (b)(2) of this section, which provides that the payment of such amount to the nuclear decommissioning fund is not deductible by the electing taxpayer.

(iii) *Actual distributions of amounts included in gross income as deemed distributions.* If the amount of a deemed distribution is included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurs, no further amount is required to be included in gross income when the amount of the deemed distribution is actually distributed by the nuclear decommissioning fund. The amount of a deemed distribution is actually distributed by a nuclear decommissioning fund as the first actual distributions are made by the nuclear decommissioning fund on or after the date of the deemed distribution.

(e) *Deduction when economic performance occurs.* An electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs no earlier than the taxable year in which economic performance occurs with respect to such costs (see section 461(h)(2)). The amount of nuclear decommissioning costs that is deductible under this paragraph (e) is determined without regard to section 280B (see § 1.468A-1T(b)(6)). A deduction is allowed under this paragraph (e) whether or not a deduction was allowed with respect to such costs under section 468A(a) and

paragraph (a) of this section for an earlier taxable year.

§ 1.468A-3T Ruling amount (temporary).

(a) *In general.* (1) Except as otherwise provided in paragraph (g) of this section or in § 1.468A-8T (relating to deductions for special transfers into a nuclear decommissioning fund), an electing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year. Except as provided in paragraph (a)(4) or (5) of this section, a schedule of ruling amounts for a nuclear decommissioning fund (*schedule of ruling amounts*) is a ruling (within the meaning of § 601.201(a)(2) of this chapter) specifying the annual payments (ruling amounts) that, over the taxable years remaining in the funding period as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event greater than) the amount of decommissioning costs allocable to the fund. The projected balance of a nuclear decommissioning fund as of the last day of the funding period shall be calculated by taking into account the fair market value of the assets of the fund as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the assets of the fund after payment of the estimated administrative costs and incidental expenses to be incurred by the fund (as defined in § 1.468A-5T(a)(3)(ii)), including all Federal, State and local income taxes to be incurred by the fund (the after-tax rate of return). See paragraph (c) of this section for a definition of funding period and paragraph (d) of this section for guidance with respect to the amount of decommissioning costs allocable to a fund.

(2) Each schedule of ruling amounts must be consistent with the principles and provisions of this section and must be based on reasonable assumptions concerning—

(i) The after-tax rate of return to be earned by the amounts collected for decommissioning;

(ii) The total estimated cost of decommissioning the nuclear power plant (see paragraph (d)(2) of this section); and

(iii) The frequency of contributions to a nuclear decommissioning fund for a

taxable year (for example, monthly, quarterly, semi-annual or annual contributions).

(3) The Internal Revenue Service (IRS) shall provide a schedule of ruling amounts that is identical to the schedule of ruling amounts proposed by the taxpayer in connection with the taxpayer's request for a schedule of ruling amounts (see paragraph (e)(2)(viii) of this section), but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule of ruling amounts is consistent with the principles and provisions of this section and is based on reasonable assumptions. If a proposed schedule of ruling amounts is not consistent with the principles and provisions of this section or is not based on reasonable assumptions, the taxpayer may propose an amended schedule of ruling amounts that is consistent with such principles and provisions and is based on reasonable assumptions.

(4) The taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles and provisions of this section and is based on reasonable assumptions. If a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order. In addition, a taxpayer that owns an interest in a deregulated nuclear plant may submit assumptions used by a public utility commission that formerly had regulatory jurisdiction over the plant as support for the assumptions used in calculating the taxpayer's proposed schedule of ruling amounts, with the understanding that the assumptions used by the public utility commission may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, are an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof under this paragraph (a)(4).

(5) The IRS will approve, at the request of the taxpayer, a formula or method for determining a schedule of

ruling amounts (rather than providing a schedule specifying a dollar amount for each taxable year) if the formula or method is consistent with the principles and provisions of this section and is based on reasonable assumptions. See paragraph (f)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

(6) The IRS may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraphs (a) through (d) of this section if—

(i) In connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts; and

(ii) The IRS determines that special treatment is consistent with the purpose of section 468A.

(b) *Level funding limitation.* (1) Except as otherwise provided in paragraph (b)(3) of this section, the ruling amount specified in a schedule of ruling amounts for any taxable year in the funding period (as defined in paragraph (c) of this section) shall not be less than the ruling amount specified in such schedule for any earlier taxable year.

(2) The ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the funding period may be less than the ruling amount specified in such schedule for an earlier taxable year.

(3) The ruling amount specified in a schedule of ruling amounts for the last taxable year in the funding period may be less than the ruling amount specified in such schedule for an earlier taxable year if, when annualized, the amount specified for the last taxable year is not less than the amount specified for such earlier taxable year. The amount specified for the last taxable year is annualized by—

(i) Determining the number of days between the beginning of the taxable year and the end of the plant's estimated useful life;

(ii) Dividing the amount specified for the last taxable year by such number of days; and

(iii) Multiplying the result by the number of days in the last taxable year (generally 365).

(c) *Funding period*—(1) *In general.* For purposes of this section, the funding period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to

such nuclear decommissioning fund (see § 1.468A-2T(a) for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant to which the nuclear decommissioning fund relates.

(2) *Estimated useful life.* The last day of the estimated useful life of a nuclear power plant is determined under the following rules:

(i) Except as provided in paragraph (c)(2)(ii) of this section—

(A) The last day of the estimated useful life of a nuclear power plant that has been included in rate base for ratemaking purposes in any ratemaking proceeding that established rates for a period before January 1, 2006, is the date used in the first such ratemaking proceeding as the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes;

(B) The last day of the estimated useful life of a nuclear power plant that is not described in paragraph (c)(2)(i)(A) of this section is the last day of the estimated useful life of the plant determined as of the date it is placed in service;

(C) A taxpayer with an interest in the plant that is not described in paragraph (c)(2)(i)(A) of this section may use any reasonable method for determining the last day of such estimated useful life; and

(D) A reasonable method for purposes of paragraph (c)(2)(i)(C) of this section may include use of the period for which a public utility commission has included a comparable nuclear power plant in rate base for ratemaking purposes.

(ii) If it can be established that the estimated useful life of the nuclear power plant will end on a date other than the date determined under paragraph (c)(2)(i) of this section, the taxpayer may use such other date as the last day of the estimated useful life but is not required to do so. If the last day of the estimated useful life was determined under paragraph (c)(2)(i)(A) of this section and the most recent ratemaking proceeding used an alternative date as the estimated date on which the nuclear power plant will no longer be included rate base, the most recent ratemaking proceeding will generally be treated as establishing such alternative date as the last day of the estimated useful life.

(d) *Decommissioning costs allocable to a fund.* The amount of

decommissioning costs allocable to a nuclear decommissioning fund is determined for purposes of this section by applying the following rules and definitions:

(1) *General rule.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant to which the fund relates.

(2) *Total estimated cost of decommissioning.* Under paragraph (a)(2) of this section, the taxpayer must demonstrate the reasonableness of the assumptions concerning the total estimated cost of decommissioning the nuclear power plant.

(3) *Taxpayer's share.* The taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such nuclear power plant multiplied by the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents (see § 1.468A-1T(b)(2) for circumstances in which a taxpayer possesses a qualifying interest in a nuclear power plant).

(e) *Manner of requesting schedule of ruling amounts—*(1) *In general.* (i) In order to receive a ruling amount for any taxable year, a taxpayer must file a request for a schedule of ruling amounts that complies with the requirements of this paragraph (e), the applicable procedural rules set forth in § 601.201(e) of this chapter (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of ruling amounts is required for each nuclear decommissioning fund established by a taxpayer (see paragraph (a) of § 1.468A-5T for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) Except as provided by §§ 1.468A-5T(a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations) and 1.468A-8T (relating to a special transfer under section 468A(f)(1)), a request for a schedule of ruling amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Internal Revenue Code.

(iv) In the case of an affiliated group of corporations that join in the filing of a consolidated return, the common parent of the group may request a schedule of ruling amounts for each member of the group that possesses a qualifying interest in the same nuclear power plant by filing a single submission with the IRS.

(v) The IRS shall not provide or revise a ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date (as defined in § 1.468A-2T(c)(1)) for such taxable year. In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(vi) Except as provided in paragraph (e)(1)(vii) of this section, a request for a schedule of ruling amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (e).

(vii) If a request does not comply substantially with the requirements of this paragraph (e), the IRS will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (e) are provided to the IRS within 30 days after this notification, the request will be considered filed on the date of the original submission. In addition, the request will be considered filed on the date of the original submission in a case in which the information and materials are provided more than 30 days after the notification if the IRS determines that the electing taxpayer made a good faith effort to provide the applicable information or materials within 30 days after notification and also determines that treating the request as filed on the date of the original submission is consistent with the purposes of section 468A. In any other case in which the information or materials necessary to comply substantially with the requirements of this paragraph (e) are not provided within 30 days after the notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (e) are provided.

(2) *Information required.* A request for a schedule of ruling amounts must contain the following information:

(i) The taxpayer's name, address, and taxpayer identification number.

(ii) Whether the request is for an initial schedule of ruling amounts, a mandatory review of the schedule of ruling amounts (see paragraph (f)(1) of this section), or an elective review of the schedule of ruling amounts (see paragraph (f)(2) of this section).

(iii) The name and location of the nuclear power plant with respect to which a schedule of ruling amounts is requested.

(iv) A description of the taxpayer's qualifying interest in the nuclear power plant and the percentage of such nuclear

power plant that the qualifying interest of the taxpayer represents.

(v) Where applicable, an identification of each public utility commission that establishes or approves rates for the furnishing or sale by the taxpayer of electric energy generated by the nuclear power plant, and, for each public utility commission identified—

(A) Whether the public utility commission has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes;

(B) The amount of decommissioning costs that are to be included in the taxpayer's cost of service for each taxable year under the current determination and amounts that otherwise are required to be included in the taxpayer's income under section 88 and the regulations;

(C) A description of the assumptions, estimates and other factors used by the public utility commission to determine the amount of decommissioning costs;

(D) A copy of such portions of any order or opinion of the public utility commission as pertaining to the public utility commission's most recent determination of the amount of decommissioning costs to be included in cost of service; and

(E) A copy of each engineering or cost study that was relied on or used by the public utility commission in determining the amount of decommissioning costs to be included in the taxpayer's cost of service under the current determination.

(vi) A description of the assumptions, estimates and other factors that were used by the taxpayer to determine the amount of decommissioning costs, including each of the following if applicable:

(A) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement).

(B) The estimated year in which substantial decommissioning costs will first be incurred.

(C) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see § 1.468A-5T(d)(3) for a definition of substantial completion of decommissioning).

(D) The total estimated cost of decommissioning expressed in current dollars (that is, based on price levels in effect at the time of the current determination).

(E) The total estimated cost of decommissioning expressed in future dollars (that is, based on anticipated price levels when expenses are expected to be paid).

(F) For each taxable year in the period that begins with the year specified in paragraph (e)(2)(vi)(B) of this section (the estimated year in which substantial decommissioning costs will first be incurred) and ends with the year specified in paragraph (e)(2)(vi)(C) of this section (the estimated year in which the decommissioning of the nuclear power plant will be substantially complete), the estimated cost of decommissioning expressed in future dollars.

(G) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars.

(H) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning.

(I) A copy of each engineering or cost study that was relied on or used by the taxpayer in determining the amount of decommissioning costs.

(vii) A proposed schedule of ruling amounts for each taxable year remaining in the funding period as of the date the schedule of ruling amounts will first apply.

(viii) A description of the assumptions, estimates and other factors that were used in determining the proposed schedule of ruling amounts, including each of the following if applicable—

(A) The funding period (as such term is defined in paragraph (c) of this section);

(B) The assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund;

(C) The fair market value of the assets (if any) of the nuclear decommissioning fund as of the first day of the first taxable year to which the schedule of ruling amounts will apply;

(D) The amount expected to be earned by the assets of the nuclear decommissioning fund (based on the after-tax rate of return applicable to the fund) over the period that begins on the first day of the first taxable year to which the schedule of ruling amounts will apply and ends on the last day of the funding period;

(E) The amount of decommissioning costs allocable to the nuclear decommissioning fund (as determined under paragraph (d) of this section);

(F) The total estimated cost of decommissioning (as determined under paragraph (d)(2) of this section); and

(G) The taxpayer's share of the total estimated cost of decommissioning (as such term is defined in paragraph (d)(3) of this section).

(ix) If the request is for a revised schedule of ruling amounts, the after-tax rate of return earned by the assets of the nuclear decommissioning fund for each taxable year in the period that begins with the date of the initial contribution to the fund and ends with the first day of the first taxable year to which the revised schedule of ruling amounts applies.

(x) If applicable, an explanation of the need for a schedule of ruling amounts determined on a basis other than the rules of paragraphs (a) through (d) of this section and a description of an alternative basis for determining a schedule of ruling amounts (see paragraph (a)(5) of this section).

(xi) A chart or table, based upon the assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund, setting forth the years the fund will be in existence, the annual contribution to the fund, the estimated annual earnings of the fund and the cumulative total balance in the fund.

(xii) If the request is for a revised schedule of ruling amounts, a copy of the schedule of ruling amounts that the revised schedule would replace.

(xiii) If the request for a schedule of ruling amounts contains a request, pursuant to § 1.468A-5T(a)(1)(iv), that the IRS rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for Federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

(xiv) Any other information required by the IRS that may be necessary or useful in determining the schedule of ruling amounts.

(3) *Administrative procedures.* The IRS may prescribe administrative procedures that supplement the provisions of paragraph (e)(1) and (2) of this section. In addition, the IRS may, in its discretion, waive the requirements of paragraph (e)(1) and (2) of this section under appropriate circumstances.

(f) *Review and revision of schedule of ruling amounts—(1) Mandatory review.*

(i) Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (e) of this section must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received. If the taxpayer calculated its most recent

schedule of ruling amounts on any basis other than an order issued by a public utility commission, the taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 5th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the 5th taxable year that begins after its taxable year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation in the ruling amount determined under the formula or method in effect for a taxable year if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

(B) Any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by § 1.468A-6T (which prescribes ruling amounts for the taxable year in which there is a disposition of a qualifying interest in a nuclear power plant) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

(iii) A taxpayer requesting a schedule of deduction amounts for a nuclear decommissioning fund under § 1.468A-8T must also request a revised schedule of ruling amounts for the fund. The revised schedule of ruling amounts must apply beginning with the first taxable year for which a deduction is allowed under the schedule of deduction amounts.

(iv) If the operating license of the nuclear power plant to which a nuclear decommissioning fund relates is renewed, the taxpayer maintaining the fund must request a revised schedule of ruling amounts. The request for the revised schedule must be submitted on or before the deemed payment deadline for the taxable year that includes the date on which the operating license is renewed.

(v) A request for a schedule of ruling amounts required by this paragraph (f)(1) must be made in accordance with the rules of paragraph (e) of this section.

If a taxpayer does not properly file a request for a revised schedule of ruling amounts by the date provided in paragraph (f)(1) (i), (ii) or (iv) of this section (whichever is applicable), the taxpayer's ruling amount for the first taxable year to which the revised schedule of ruling amounts would have applied and for all succeeding taxable years until a new schedule is obtained shall be zero dollars, unless, in its discretion, the IRS provides otherwise in such new schedule of ruling amounts. Thus, if a taxpayer is required to request a revised schedule of ruling amounts under any provision of this section, and each ruling amount in the revised schedule would equal zero dollars, the taxpayer may, instead of requesting a new schedule of ruling amounts, begin treating the ruling amounts under its most recent schedule as equal to zero dollars.

(2) *Elective review.* Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (e) of this section can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of paragraph (e) of this section; thus, the IRS will not provide a revised ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year (see paragraph (e)(1)(vi) of this section).

(3) *Determination of revised schedule of ruling amounts.* A revised schedule of ruling amounts for a nuclear decommissioning fund shall be determined under this section without regard to any schedule of ruling amounts for such nuclear decommissioning fund that was issued prior to such revised schedule. Thus, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the funding period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year.

(g) *Special rule permitting payments to a nuclear decommissioning fund before receipt of an initial or revised ruling amount applicable to a taxable year.* (1) If an electing taxpayer has filed a timely request for an initial or revised ruling amount for a taxable year beginning on or after January 1, 2006, and does not receive the ruling amount on or before the deemed payment deadline date for such taxable year, the taxpayer may make a payment to a nuclear decommissioning fund on the basis of the ruling amount proposed in the taxpayer's request. Thus, under the preceding sentence, an electing taxpayer may make a payment to a nuclear

decommissioning fund for such taxable year that does not exceed the ruling amount proposed by the taxpayer for such taxable year in a timely filed request for a schedule of ruling amounts.

(2) If an electing taxpayer makes a payment to a nuclear decommissioning fund for any taxable year pursuant to paragraph (g)(1) of this section and the ruling amount that is provided by the IRS is greater than the ruling amount proposed by the taxpayer for such taxable year, the taxpayer is not allowed to make an additional payment to the fund for such taxable year after the deemed payment deadline date for such taxable year.

(3) If the payment that an electing taxpayer makes to a nuclear decommissioning fund for any taxable year pursuant to paragraph (g)(1) of this section exceeds the ruling amount that is provided by the IRS for such taxable year, the following rules apply:

(i) The amount of the excess is an excess contribution (as defined in § 1.468A-5T(c)(2)(ii)) for such taxable year.

(ii) The amount of the excess contribution is not deductible (see § 1.468A-2T(b)(2)) and must be withdrawn by the taxpayer pursuant to the rules of § 1.468A-5T(c)(2)(i).

(iii) The taxpayer must withdraw the after-tax earnings on the excess contribution.

(iv) If the taxpayer claimed a deduction for the excess contribution, the taxpayer should file an amended return for the taxable year.

§ 1.468A-4T Treatment of nuclear decommissioning fund (temporary).

(a) *In general.* A nuclear decommissioning fund is subject to tax on all of its modified gross income (as defined in paragraph (b) of this section). The rate of tax is 20 percent for taxable years beginning after December 31, 1995. This tax is in lieu of any other tax that may be imposed under subtitle A of the Internal Revenue Code (Code) on the income earned by the assets of the nuclear decommissioning fund.

(b) *Modified gross income.* For purposes of this section, the term *modified gross income* means gross income as defined under section 61 computed with the following modifications:

(1) The amount of any payment or special transfer to the nuclear decommissioning fund with respect to which a deduction is allowed under section 468A(a) or section 468A(f) is excluded from gross income.

(2) A deduction is allowed for the amount of administrative costs and

other incidental expenses of the nuclear decommissioning fund (including taxes, legal expenses, accounting expenses, actuarial expenses and trustee expenses, but not including decommissioning costs) that are otherwise deductible and that are paid by the nuclear decommissioning fund to any person other than the electing taxpayer. An expense is otherwise deductible for purposes of this paragraph (b)(2) if it would be deductible under chapter 1 of the Code in determining the taxable income of a corporation. For example, because Federal income taxes are not deductible under chapter 1 of the Code in determining the taxable income of a corporation, the tax imposed by section 468A(e)(2) and paragraph (a) of this section is not deductible in determining the modified gross income of a nuclear decommissioning fund. Similarly, because certain expenses allocable to tax-exempt interest income are not deductible under section 265 in determining the taxable income of a corporation, such expenses are not deductible in determining the modified gross income of a nuclear decommissioning fund.

(3) A deduction is allowed for the amount of an otherwise deductible loss that is sustained by the nuclear decommissioning fund in connection with the sale, exchange or worthlessness of any investment. A loss is otherwise deductible for purposes of this paragraph (b)(3) if such loss would be deductible by a corporation under section 165(f) or (g) and sections 1211(a) and 1212(a).

(4) A deduction is allowed for the amount of an otherwise deductible net operating loss of the nuclear decommissioning fund. For purposes of this paragraph (b), the net operating loss of a nuclear decommissioning fund for a taxable year is the amount by which the deductions allowable under paragraphs (b)(2) and (3) of this section exceed the gross income of the nuclear decommissioning fund computed with the modification described in paragraph (b)(1) of this section. A net operating loss is otherwise deductible for purposes of this paragraph (b)(4) if such a net operating loss would be deductible by a corporation under section 172(a).

(c) *Special rules*—(1) *Period for computation of modified gross income.* The modified gross income of a nuclear decommissioning fund must be computed on the basis of the taxable year of the electing taxpayer. If an electing taxpayer changes its taxable year, each nuclear decommissioning fund of the electing taxpayer must change to the new taxable year. See section 442 and section 1.442-1 for

rules relating to the change to a new taxable year.

(2) *Gain or loss upon distribution of property by a fund.* A distribution of property by a nuclear decommissioning fund (whether an actual distribution or a deemed distribution) shall be considered a disposition of property by the nuclear decommissioning fund for purposes of section 1001. In determining the amount of gain or loss from such disposition, the amount realized by the nuclear decommissioning fund shall be the fair market value of the property on the date of disposition.

(3) *Denial of credits against tax.* The tax imposed on the modified gross income of a nuclear decommissioning fund under paragraph (a) of this section is not to be reduced or offset by any credits against tax provided by part IV of subchapter A of chapter 1 of the Code other than the credit provided by section 31(c) for amounts withheld under section 3406 (back-up withholding).

(4) *Other corporate taxes inapplicable.* Although the modified gross income of a nuclear decommissioning fund is subject to tax at the rate specified by section 468A(e)(2) and paragraph (a) of this section, a nuclear decommissioning fund is not subject to the other taxes imposed on corporations under subtitle A of the Code. For example, a nuclear decommissioning fund is not subject to the alternative minimum tax imposed by section 55, the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and the alternative tax imposed on a corporation under section 1201(a).

(d) *Treatment as corporation for purposes of subtitle F.* For purposes of subtitle F of the Code and the regulations, a nuclear decommissioning fund is to be treated as if it were a corporation and the tax imposed by section 468A(e)(2) and paragraph (a) of this section is to be treated as a tax imposed by section 11. Thus, for example, the following rules apply:

(1) A nuclear decommissioning fund must file a return with respect to the tax imposed by section 468A(e)(2) and paragraph (a) of this section for each taxable year (or portion thereof) that the fund is in existence even though no amount is included in the gross income of the fund for such taxable year. The return is to be made on Form 1120-ND in accordance with the instructions relating to such form. For purposes of this paragraph (d)(1), a nuclear decommissioning fund is in existence for the period that—

(i) Begins on the date that the first deductible payment is actually made to such nuclear decommissioning fund; and

(ii) Ends on the date of termination (see § 1.468A-5T(d)), the date that the entire fund is disqualified (see § 1.468A-5T(c)), or the date that the electing taxpayer disposes of its entire qualifying interest in the nuclear power plant to which the nuclear decommissioning fund relates (other than in connection with the transfer of the entire fund to the person acquiring such interest), whichever is applicable.

(2) For each taxable year of the nuclear decommissioning fund, the return described in paragraph (d)(1) of this section must be filed on or before the 15th day of the third month following the close of such taxable year unless the nuclear decommissioning fund is granted an extension of time for filing under section 6081. If such an extension is granted for any taxable year, the return for such taxable year must be filed on or before the extended due date for such taxable year.

(3) A nuclear decommissioning fund must provide its employer identification number on returns, statements and other documents as required by the forms and instructions relating thereto. The employer identification number is obtained by filing a Form SS-4, Application for Employer Identification Number, in accordance with the instructions relating thereto.

(4) A nuclear decommissioning fund must deposit all payments of tax imposed by section 468A(e)(2) and paragraph (a) of this section (including any payments of estimated tax) with an authorized government depository in accordance with § 1.6302-1.

(5) A nuclear decommissioning fund is subject to the addition to tax imposed by section 6655 in case of a failure to pay estimated income tax. For purposes of section 6655 and this section—

(i) The tax with respect to which the amount of the underpayment is computed in the case of a nuclear decommissioning fund is the tax imposed by section 468A(e)(2) and paragraph (a) of this section; and

(ii) The taxable income with respect to which the nuclear decommissioning fund's status as a large corporation is measured is modified gross income (as defined by paragraph (b) of this section).

§ 1.468A-5T Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning (temporary).

(a) *Qualification requirements*—(1) *In general.* (i) A nuclear decommissioning fund must be established and maintained at all times in the United States pursuant to an arrangement that qualifies as a trust under State law. Such trust must be established for the exclusive purpose of providing funds for the decommissioning of one or more nuclear power plants, but a single trust agreement may establish multiple funds for such purpose. Thus—

(A) Two or more nuclear decommissioning funds can be established and maintained pursuant to a single trust agreement; and

(B) One or more funds that are to be used for the decommissioning of a nuclear power plant and that do not qualify as nuclear decommissioning funds under this paragraph (a) can be established and maintained pursuant to a trust agreement that governs one or more nuclear decommissioning funds.

(ii) A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a qualifying interest. The Internal Revenue Service (IRS) will issue a separate schedule of ruling amounts with respect to each nuclear decommissioning fund and each nuclear decommissioning fund must file a separate income tax return even if other nuclear decommissioning funds or nonqualified funds are established and maintained pursuant to the trust agreement governing such fund or the assets of other nuclear decommissioning funds or nonqualified funds are pooled with the assets of such fund.

(iii) An electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects the application of section 468A. If a nuclear power plant is subject to the ratemaking jurisdiction of two or more public utility commissions and any such public utility commission requires a separate fund to be maintained for the benefit of ratepayers whose rates are established or approved by the public utility commission, the separate funds maintained for such plant (whether or not established and maintained pursuant to a single trust agreement) shall be considered a single nuclear decommissioning fund for purposes of

section 468A and §§ 1.468A-1T through 1.468A-4T, this section and §§ 1.468A-7T through 1.468A-9T. Thus, for example, the IRS will issue one schedule of ruling amounts with respect to such nuclear power plant, the nuclear decommissioning fund must file a single income tax return (see § 1.468A-4T(d)(1)), and, if the IRS disqualifies the nuclear decommissioning fund, the assets of each separate fund are treated as distributed on the date of disqualification (see paragraph (c)(3) of this section).

(iv) If assets of a nuclear decommissioning fund are (or will be) invested through an unincorporated organization, within the meaning of § 301.7701-2 of this chapter, the IRS will rule, if requested, whether the organization is an association taxable as a corporation for Federal tax purposes. A request for this ruling may be made by the electing taxpayer as part of its request for a schedule of ruling amounts or as part of a request under § 1.468A-8T for a schedule of deduction amounts.

(2) *Limitation on contributions.* Except as otherwise provided in § 1.468A-8T (relating to special transfers under section 468A(f)), a nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and § 1.468A-2T(a). Thus, for example, except in the case of a special transfer pursuant to § 1.468A-8T, securities may not be contributed to a nuclear decommissioning fund even if the taxpayer or a fund established by the taxpayer previously held such securities for the purpose of providing funds for the decommissioning of a nuclear power plant.

(3) *Limitation on use of fund*—(i) *In general.* The assets of a nuclear decommissioning fund are to be used exclusively—

(A) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(B) To pay administrative costs and other incidental expenses of the nuclear decommissioning fund; and

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i)(A) or (B) of this section, to make investments.

(ii) *Definition of administrative costs and expenses.* For purposes of paragraph (a)(3)(i) of this section, the term *administrative costs and other incidental expenses of a nuclear decommissioning fund* means all

ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and § 1.468A-4T(a), any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs or the payment of insurance premiums on a policy to pay for the nuclear decommissioning costs of a nuclear power plant. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

(4) *Trust provisions.* Each qualified nuclear decommissioning fund trust agreement must provide that assets in the fund must be used as authorized by section 468A and the regulations and that the agreement may not be amended so as to violate section 468A or the regulations.

(b) *Prohibitions against self-dealing*—(1) *In general.* Except as otherwise provided in this paragraph (b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

(2) *Self-dealing defined.* For purposes of this paragraph (b), the term “self-dealing” means any act described in section 4951(d), except—

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(ii) A withdrawal of an excess contribution by the electing taxpayer pursuant to the rules of paragraph (c)(2) of this section;

(iii) A withdrawal by the electing taxpayer of amounts that have been treated as distributed under paragraph (c)(3) of this section;

(iv) A payment of amounts remaining in a nuclear decommissioning fund to the electing taxpayer after the termination of such fund (as determined under paragraph (d) of this section);

(v) Any act described in section 4951(d)(2)(B) or (C);

(vi) Any act that is described in § 53.4951-1(c) of this chapter and is

undertaken to facilitate the temporary investment of assets or the payment of reasonable administrative expenses of the nuclear decommissioning fund; or

(vii) A payment by a nuclear decommissioning fund for the performance of trust functions and certain general banking services by a bank or trust company that is a disqualified person if the banking services are reasonable and necessary to carry out the purposes of the fund and the compensation paid to the bank or trust company for such services, taking into account the fair interest rate for the use of the funds by the bank or trust company, is not excessive.

(3) *Disqualified person defined.* For purposes of this paragraph (b), the term “disqualified person” includes each person described in section 4951(e)(4) and § 53.4951-1(d).

(4) *General banking services.* The general banking services allowed by paragraph (b)(2)(vii) of this section are—

(i) Checking accounts, as long as the bank does not charge interest on any overwithdrawals;

(ii) Savings accounts, as long as the fund may withdraw its funds on no more than 30 days’ notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit; and

(iii) Safekeeping activities (see § 53.4941(d)-3(c)(2), *Example 3*, of this chapter).

(c) *Disqualification of nuclear decommissioning fund—(1) In general—*

(i) *Disqualification events.* Except as otherwise provided in paragraph (c)(2) of this section, the IRS may, in its discretion, disqualify all or any portion of a nuclear decommissioning fund if at any time during a taxable year of the fund—

(A) The fund does not satisfy the requirements of paragraph (a) of this section; or

(B) The fund and a disqualified person engage in an act of self-dealing (as defined in paragraph (b)(2) of this section).

(ii) *Date of disqualification.* (A) Except as otherwise provided in this paragraph (c)(1)(ii), the date on which a disqualification under this paragraph (c) will take effect (date of disqualification) is the date that the fund does not satisfy the requirements of paragraph (a) of this section or the date on which the act of self-dealing occurs, whichever is applicable.

(B) If the IRS determines, in its discretion, that the disqualification should take effect on a date subsequent to the date specified in paragraph (C)(1)(ii)(A) of this section, the date of disqualification is such subsequent date.

(iii) *Notice of disqualification.* The IRS will notify the electing taxpayer of the disqualification of a nuclear decommissioning fund and the date of disqualification by registered or certified mail to the last known address of the electing taxpayer (the notice of disqualification). For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter.

(2) *Exception to disqualification—(i) In general.* A nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section by reason of an excess contribution or the withdrawal of such excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year to which the excess contribution relates. In the case of an excess contribution that is the result of a payment made pursuant to § 1.468A-3T(g)(1), a nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the later of—

(A) The date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year to which the excess contribution relates; or

(B) The date that is 30 days after the date that the taxpayer receives the ruling amount for such taxable year.

(ii) *Excess contribution defined.* For purposes of this section, an excess contribution is the amount by which cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceed the payment limitation contained in section 468A(b) and § 1.468A-2T(b). The amount of a special transfer permitted under § 1.468A-8T is not treated as a cash payment for this purpose.

(iii) *Taxation of income attributable to an excess contribution.* The income of a nuclear decommissioning fund attributable to an excess contribution is required to be included in the gross income of the nuclear decommissioning fund under § 1.468A-4T(b).

(3) *Disqualification treated as distribution.* If all or any portion of a nuclear decommissioning fund is disqualified under paragraph (c)(1) of this section, the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. Such a distribution shall be treated for purposes of section

1001 as a disposition of property held by the nuclear decommissioning fund (see § 1.468A-4T(c)(2)). In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the fair market value of the distributable assets of the nuclear decommissioning fund multiplied by the fraction of the nuclear decommissioning fund that was disqualified under paragraph (c)(1) of this section. For this purpose, the fair market value of the distributable assets of the nuclear decommissioning fund is equal to the fair market value of the assets of the fund determined as of the date of disqualification, reduced by—

(i) The amount of any excess contribution that was not withdrawn before the date of disqualification if no deduction was allowed with respect to such excess contribution;

(ii) The amount of any deemed distribution that was not actually distributed before the date of disqualification (as determined under § 1.468A-2T(d)(2)(iii)) if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(iii) The amount of any tax that—

(A) Is imposed on the income of the fund;

(B) Is attributable to income taken into account before the date of disqualification or as a result of the disqualification; and

(C) Has not been paid as of the date of disqualification.

(4) *Further effects of disqualification.* Contributions made to a disqualified fund after the date of disqualification are not deductible under section 468A(a) and § 1.468A-2T(a), or, if the fund is disqualified only in part, are deductible only to the extent provided in the notice of disqualification. In addition, if any assets of the fund that are deemed distributed under paragraph (c)(3) of this section are held by the fund after the date of disqualification (or if additional assets are acquired with nondeductible contributions made to the fund after the date of disqualification), the income earned by such assets after the date of disqualification must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code (Code). An electing taxpayer can establish a nuclear decommissioning fund to replace a fund that has been disqualified in its entirety only if the IRS specifically consents to the establishment of a replacement fund in

connection with the issuance of an initial schedule of ruling amounts for such replacement fund.

(d) *Termination of nuclear decommissioning fund upon substantial completion of decommissioning*—(1) *In general.* Upon substantial completion of the decommissioning of a nuclear power plant to which a nuclear decommissioning fund relates, such nuclear decommissioning fund shall be considered terminated and treated as having distributed all of its assets on the date the termination occurs (the termination date). Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see § 1.468A-4T(c)(2)). In addition, the electing taxpayer shall include in gross income for the taxable year in which the termination occurs an amount equal to the fair market value of the assets of the fund determined as of the termination date, reduced by—

(i) The amount of any deemed distribution that was not actually distributed before the termination date if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(ii) The amount of any tax that—

(A) Is imposed on the income of the fund;

(B) Is attributable to income taken into account before the termination date or as a result of the termination; and

(C) Has not been paid as of the termination date.

(2) *Additional rules.* Contributions made to a nuclear decommissioning fund after the termination date are not deductible under section 468A(a) and § 1.468A-2T(a). In addition, if any assets are held by the fund after the termination date, the income earned by such assets after the termination date must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Code. Finally, an electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs that are incurred during any taxable year (see § 1.468A-2T(e)) even if such costs are incurred after substantial completion of decommissioning (for example, expenses incurred to monitor or safeguard the plant site).

(3) *Substantial completion of decommissioning and termination date.* (i) The substantial completion of the decommissioning of a nuclear power plant occurs on the date that the maximum acceptable radioactivity

levels mandated by the Nuclear Regulatory Commission with respect to a decommissioned nuclear power plant are satisfied (the substantial completion date). Except as otherwise provided in paragraph (d)(3)(ii) of this section, the substantial completion date is also the termination date.

(ii) If a significant portion of the total estimated decommissioning costs with respect to a nuclear power plant are not incurred on or before the substantial completion date, an electing taxpayer may request, and the IRS will issue, a ruling that designates a date subsequent to the substantial completion date as the termination date. The termination date designated in the ruling will not be later than the last day of the third taxable year after the taxable year that includes the substantial completion date. The request for a ruling under this paragraph (d)(3)(ii) must be filed during the taxable year that includes the substantial completion date and must comply with the procedural rules in effect at the time of the request.

§ 1.468A-6T Disposition of an interest in a nuclear power plant (temporary).

(a) *In general.* This section describes the Federal income tax consequences of a transfer of the assets of a nuclear decommissioning fund (Fund) within the meaning of § 1.468A-1T(b)(4) in connection with a sale, exchange, or other disposition by a taxpayer (transferor) of all or a portion of its qualifying interest in a nuclear power plant to another taxpayer (transferee). This section also explains how a schedule of ruling amounts will be determined for the transferor and transferee. For purposes of this section, a nuclear power plant includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

(b) *Requirements.* This section applies if—

(1) Immediately before the disposition, the transferor maintained a Fund with respect to the interest disposed of; and

(2) Immediately after the disposition—

(i) The transferee maintains a Fund with respect to the interest acquired;

(ii) The interest acquired is a qualifying interest of the transferee in the nuclear power plant;

(3) In connection with the disposition, either—

(i) The transferee acquires part or all of the transferor's qualifying interest in the plant and a proportionate amount of the assets of the transferor's Fund (all such assets if the transferee acquires the transferor's entire qualifying interest in

the plant) is transferred to a Fund of the transferee; or

(ii) The transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire Fund is transferred to the transferee; and

(4) The transferee continues to satisfy the requirements of § 1.468A-5T(a)(1)(iii), which permits an electing taxpayer to maintain only one Fund for each plant.

(c) *Tax consequences.* A disposition that satisfies the requirements of paragraph (b) of this section will have the following tax consequences at the time it occurs:

(1) *The transferor and its Fund.* (i) Except as provided in paragraph (c)(1)(ii) of this section, neither the transferor nor the transferor's Fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the transferor's Fund to the transferee's Fund (or by reason of the transfer of the transferor's entire Fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's Fund) will not be considered a distribution of assets by the transferor's Fund.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, if the transferor has made a special transfer under § 1.468A-8T prior to the transfer of the Fund or Fund assets, any deduction with respect to that special transfer allowable under section 468A(f)(2) for a taxable year ending after the date of the transfer of the Fund or Fund assets (the *unamortized special transfer deduction*) is allowed under section 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the Fund or Fund assets. If the taxpayer transfers only a portion of its interest in a nuclear power plant, only the corresponding portion of the unamortized special transfer deduction qualifies for the acceleration under section 468A(f)(2)(C).

(2) *The transferee and its Fund.* Neither the transferee nor the transferee's Fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the transferor's Fund to the transferee's Fund (or by reason of the transfer of the transferor's Fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's Fund) will not constitute a payment or a contribution of assets by the transferee to its Fund.

(3) *Basis.* Transfers of assets of a Fund to which this section applies do not affect basis. Thus, the transferee's Fund will have a basis in the assets received from the transferor's Fund that is the same as the basis of those assets in the transferor's Fund immediately before the disposition.

(d) *Determination of proportionate amount.* For purposes of this section, a transferor of a qualifying interest in a nuclear power plant is considered to transfer a proportionate amount of the assets of its Fund to a Fund of a transferee of the interest if, on the date of the transfer of the interest, the percentage of the fair market value of the Fund's assets attributable to the assets transferred equals the percentage of the transferor's qualifying interest that is transferred.

(e) *Calculation of schedule of ruling amounts and schedule of deduction amounts for dispositions described in this section—(1) Transferor.* If a transferor disposes of all or a portion of its qualifying interest in a nuclear power plant in a transaction to which this section applies, the transferor's schedule of ruling amounts with respect to the interests disposed of and retained (if any) and, if applicable, the amount allowable as a deduction for a special transfer under § 1.468A-8T will be determined under the following rules:

(i) *Taxable year of disposition; ruling amount.* If the transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferor in which the disposition of its interest in the nuclear power plant occurs (that is, the date that is two and one-half months after the close of that year), the transferor's ruling amount with respect to that plant for that year will equal the sum of—

(A) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the portion of the qualifying interest that is retained (if any); and

(B) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the product of—

(1) The portion of the transferor's qualifying interest that is disposed of; and

(2) A fraction, the numerator of which is the number of days in that taxable year that precede the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable year of disposition; deduction under § 1.468A-8T.* If the

transferor has elected to make a special transfer under section 468A(f), the amount allowable as a deduction under § 1.468A-8T for the taxable year in which it transfers a portion of its interest in the nuclear plant is equal to the deduction amount for that taxable year from its existing schedule of deduction amounts multiplied by the percentage of its interest that it retains. This deduction is in addition to the deduction described in paragraph (c)(1)(ii) of this section.

(iii) *Taxable years after the year of disposition.* A transferor that retains a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts (and, if applicable, a revised schedule of deduction amounts) with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferor beginning after the disposition. See § 1.468A-3T(f)(1)(ii)(B) and § 1.468A-8T(c)(3). If the transferor does not timely file such a request, the transferor's ruling amount and the transferor's deduction amount under § 1.468A-8T with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service (IRS) waives the application of this paragraph (e)(1)(iii) upon a showing of good cause for the delay.

(2) *Transferee.* If a transferee acquires all or a portion of a transferor's qualifying interest in a nuclear power plant in a transaction to which this section applies, the transferee's schedule of ruling amounts with respect to the interest acquired will be determined under the following rules:

(i) *Taxable year of disposition.* If the transferee does not file a request for a schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferee in which the disposition occurs (that is, the date that is two and one-half months after the close of that year), the transferee's ruling amount with respect to the interest acquired in the nuclear power plant for that year is equal to the amount contained in the transferor's current schedule of ruling amounts for that plant for the taxable year of the transferor in which the disposition occurred, multiplied by the product of—

(A) The portion of the transferor's qualifying interest that is transferred; and

(B) A fraction, the numerator of which is the number of days in the taxable year of the transferor including and following the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable years after the year of disposition.* A transferee of a qualifying

interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition. See § 1.468A-3T(f)(1)(ii)(B). If the transferee does not timely file such a request, the transferee's ruling amount with respect to that interest for the affected year or years will be zero, unless the IRS waives the application of this paragraph (e)(2)(ii) upon a showing of good cause for the delay.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

Example 1. (i) X Corporation is a calendar year taxpayer engaged in the sale of electric energy generated by a nuclear power plant. The plant is owned entirely by X. On May 27, 2007, X transfers a 60-percent qualifying interest in the plant to Y Corporation, a calendar year taxpayer. Before the transfer, X had received a schedule of ruling amounts containing an annual ruling amount of \$10 million for the taxable years 2005 through 2025. For 2007, neither X nor Y files a request for a revised schedule of ruling amounts.

(ii) Under paragraph (e)(1)(i) of this section, X's ruling amount for 2007 is calculated as follows: $(\$10,000,000 \times .40) + (\$10,000,000 \times .60 \times 146/365) = \$6,400,000$. Under paragraph (e)(2)(i) of this section, Y's ruling amount for 2007 is calculated as follows: $\$10,000,000 \times .60 \times 219/365 = \$3,600,000$. Under paragraphs (e)(1)(iii) and (e)(2)(ii) of this section, X and Y must file requests for revised schedules of ruling amounts by March 15, 2009.

Example 2. Y Corporation, the sole owner of a nuclear power plant, is a calendar year taxpayer. In year 1, Y elects to make a special transfer under section 468A(f)(1) to the nuclear decommissioning fund Y maintains with respect to the plant. The amount of the special transfer is \$100x, and the remaining useful life of Plant is 20 years. Y obtains a schedule of deduction amounts under § 1.468A-8T(c) permitting a \$5x deduction each year over the 20-year remaining useful life, and deducts \$5x of the special transfer amount in year 1, year 2, year 3, and year 4. On the first day of year 5, Y transfers a 25% interest in Plant to an unrelated party. Under paragraph (c)(1)(ii) of this section, Y may deduct in year 5 the unamortized special transfer deduction corresponding to the portion of the plant transferred (25 percent of \$80x or \$20x). In addition, under paragraph (e)(1)(ii) of this section, Y may deduct the portion of the deduction amount for year 5 from the schedule of deduction amounts corresponding to its retained interest in the plant (75 percent of \$5x or \$3.75x). Pursuant to paragraph (e)(1)(iii) of this section, Y must file a request for a revised schedule of ruling amounts by March 15 of year 6.

(f) *Anti-abuse provision.* The IRS may treat a disposition as satisfying the requirements of this section if the IRS determines that this treatment is

necessary or appropriate to carry out the purposes of section 468A and the regulations.

§ 1.468A-7T Manner of and time for making election (temporary).

(a) *In general.* An eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer elects the application of section 468A. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in the filing of a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such taxable year are to be deducted under section 468A. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement (Election Statement) and a copy of the schedule of ruling amounts provided pursuant to the rules of § 1.468A-3T to the taxpayer's Federal income tax return (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which payments are to be deducted under section 468A.

(b) *Required information.* The Election Statement must include the following information:

(1) The legend "Election Under Section 468A" typed or legibly printed at the top of the first page.

(2) The electing taxpayer's name, address and taxpayer identification number (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the name, address and taxpayer identification number of each electing taxpayer).

(3) The taxable year for which the election is made.

(4) For each nuclear decommissioning fund for which an election is made—

(i) The name and location of the nuclear power plant to which the fund relates;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under § 1.468A-2T(c)(1) for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under § 1.468A-2T(c)(1) for the taxable year; and

(v) The total amount of any special transfers made under § 1.468A-8T during the taxable year.

§ 1.468A-8T Special transfers to qualified funds pursuant to section 468A(f) (temporary).

(a) *General rule*—(1) *In general.* Under section 468A(f), a taxpayer maintaining a qualified nuclear decommissioning fund with respect to a nuclear power plant may transfer cash or property into the fund (a special transfer). The special transfer is not subject to the ruling amount limitation in section 468A(b) and is not treated as a cash payment for purposes of that limitation. Thus, a taxpayer may, in the same taxable year, pay the ruling amount and make a special transfer into the fund. A special transfer may be made in cash, property, or both cash and property. The amount of a special transfer (that is, the amount of cash and the fair market value of property transferred) may not exceed the present value of the pre-2005 nonqualifying amount of nuclear decommissioning costs with respect to the nuclear power plant. The taxpayer is entitled to a deduction against income for a special transfer, as described in paragraph (b) of this section. A special transfer may not be made to a nuclear decommissioning fund before the first taxable year in which a deduction amount is applicable to the nuclear decommissioning fund (see paragraph (c) of this section).

(2) *Pre-2005 nonqualifying amount.* The present value of the pre-2005 nonqualifying amount of nuclear decommissioning costs with respect to a nuclear power plant is the amount equal to the pre-2005 nonqualifying percentage of the present value of the estimated future decommissioning costs (as defined in § 1.468A-1T(b)(6)) with respect to the nuclear power plant as of the first day of the taxable year of the taxpayer in which the special transfer is made. For this purpose, the pre-2005 nonqualifying percentage for the plant is 100 percent reduced by the sum of—

(i) The qualifying percentage (within the meaning of § 1.468A-3(d)(4) as in effect on December 31, 2005) used in determining the taxpayer's last schedule of ruling amounts for the nuclear decommissioning fund under the law in

effect before the enactment of the Energy Policy Act of 2005 (that is, the percentage of the plant's total nuclear decommissioning costs that were permitted to be funded through the fund under the law in effect before the enactment of the Energy Policy Act of 2005); and

(ii) The percentage of decommissioning costs transferred in any previous special transfer (that is, the amount transferred as a percentage of the present value of the estimated future costs of decommissioning as of the first day of the taxable year in which such previous transfer was made).

(3) *Transfers in multiple years.* A taxpayer making a special transfer is not required to transfer the entire eligible amount in a single year. The requirements of paragraph (c) of this section apply separately to each year in which a special transfer is made. In calculating the amount of any subsequent transfer, the taxpayer must reduce the pre-2005 nonqualifying percentage under paragraph (a)(2) of this section to take into account all previous transfers. For example, if a taxpayer has a pre-2005 nonqualifying percentage of 40 percent, and transfers half of the eligible amount in a special transfer, any subsequent transfer must be calculated on the basis of a pre-2005 nonqualifying percentage of 20 percent.

(b) *Deduction for amounts transferred*—(1) *In general.* (i) Except as provided in this paragraph (b), the deduction for any special transfer is allowed ratably over the remaining useful life of the nuclear power plant.

(ii) For purposes of this paragraph (b), the remaining useful life of the nuclear power plant is the period beginning on the first day of the taxable year during which the transfer is made and ending on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant. The last day of the estimated useful life of the nuclear power plant is determined for this purpose under the rules of § 1.468A-3T(c)(2).

(iii) The deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property contributed or the taxpayer's basis in that property.

(2) *Denial of deduction for previously deducted amounts.* If a deduction (other than a deduction under section 468A) has been allowed to the taxpayer (or a predecessor) on account of expected decommissioning costs for a nuclear power plant (a nonconforming deduction) or an amount otherwise includible in income has been excluded from the gross income of the taxpayer (or a predecessor) on account of such

expected decommissioning costs (a nonconforming exclusion), the deduction allowed for a special transfer to the nuclear decommissioning fund maintained with respect to the plant is reduced. In the case of a single special transfer of the full eligible amount, the reduction is equal to the aggregate amount of all nonconforming deductions and nonconforming exclusions. In the case of a transfer of less than the full eligible amount, the reduction is a ratable portion of such aggregate amount.

(3) *Transfers of qualified nuclear decommissioning funds.* (i) If a special transfer is made to any qualified nuclear decommissioning fund, there is a subsequent transfer of the fund or the assets of the fund (a fund transfer), and § 1.468–6T applies to the fund transfer, any amount of the deduction under paragraph (b) of this section allocable to taxable years ending after the date of the fund transfer will be allowed as a current deduction to the transferor for the taxable year that includes the date of the fund transfer. See § 468A–6T(c) for additional rules concerning transfers of decommissioning funds, including the transfer of a portion of the taxpayer's interest in a nuclear power plant. If a taxpayer transfers of only part of the fund or the fund's assets, the rules in this paragraph (b)(3) apply only to the corresponding portion of the deduction under paragraph (b) of this section.

(ii) If a deduction is allowed to the transferor under paragraph (b)(3)(i) of this section and the transferee is related to the transferor, the Internal Revenue Service (IRS) will not approve the transferee's schedule of ruling amounts for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in recapture of the acceleration amount. For this purpose—

(A) The acceleration amount is the difference between the deduction allowed under this paragraph (b)(3) and the present value as of the beginning of the acceleration period of the deductions that, but for the transfer, would have been allowed under this paragraph (b) for taxable years during the acceleration period;

(B) The acceleration amount is recaptured if the aggregate present value of the ruling amounts at the beginning of the acceleration period is equal to the amount by which the aggregate present value of the ruling amounts that would have been approved but for this paragraph (b)(3)(ii) exceeds the acceleration amount;

(C) The acceleration period is the period from the first day of the transferor's first taxable year beginning

after the date of the transfer until the end of the plant's remaining useful life;

(D) Present values will be determined using the assumptions that are used in determining the transferee's first schedule of ruling amounts; and

(E) A transferor and a transferee are related if their relationship is specified in section 267(b) or section 707(b)(1) or they are treated as a single taxpayer under section 41(f)(1)(A) or (B).

(4) *Special rules*—(i) *Gain or loss not recognized on transfers to fund.* No gain or loss will be recognized on any special transfer.

(ii) *Taxpayer basis in fund.* Notwithstanding any other provision of the Internal Revenue Code (Code) and regulations, the taxpayer's basis in the fund is not increased by reason of the special transfer.

(iii) *Fund basis in transferred property.* The fund's basis in any property transferred in a special transfer is the same as the transferor's basis in the property immediately before the transfer.

(c) *Schedule of deductions required*—(1) *In general.* A taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A schedule of deduction amounts for a nuclear decommissioning fund (schedule of deduction amounts) is a ruling (within the meaning of § 601.201(a)(2) of this chapter) specifying the annual deductions (deduction amounts) that, over the taxable years in the remaining useful life of the nuclear power plant, will result in the deduction of the entire amount of the special transfer. Such a request may be combined with a request for a schedule of ruling amounts under § 1.468A–3T(a). In the case of a combined request, the schedule of deduction amounts requested under this paragraph (c)(1) must be stated separately from the schedule of ruling amounts requested under § 1.468A–3T(a) and approval of the schedule of deduction amounts under this section will constitute a separate ruling. A request for a schedule of deduction amounts must comply with all provisions of paragraph (d) of this section.

(2) *Transfers in multiple taxable years.* A taxpayer making a special transfer in more than one taxable year pursuant to paragraph (a)(3) of this section must request a new schedule of deduction amounts in connection with each special transfer.

(3) *Transfer of partial interest in fund.* If a taxpayer transfers part of a fund or

a fund's assets and is allowed a deduction under paragraph (b)(3) of this section, the taxpayer must request a new schedule of deduction amounts in connection with the transfer.

(d) *Manner of requesting schedule of deduction amounts*—(1) *In general.* (i) In order to receive a deduction amount for any taxable year, a taxpayer must file a request for a schedule of deduction amounts that complies with the requirements of this paragraph (d), the applicable procedural rules set forth in § 601.201(e) of this chapter (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of deduction amounts is required for each nuclear decommissioning fund established by a taxpayer (see § 1.468A–5T(a) for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) Except as provided by § 1.468A–5T(a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations) and § 1.468A–3T (relating to a request for a schedule of ruling amounts), a request for a schedule of deduction amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Code.

(iv) In the case of an affiliated group of corporations that join in the filing of a consolidated return, the common parent of the group may request a schedule of deduction amounts for each member of the group that possesses a qualifying interest in the same nuclear power plant by filing a single submission with the IRS.

(v) The IRS shall not provide or revise a deduction amount applicable to a taxable year in response to a request for a schedule of deduction amounts that is filed after the deemed payment deadline date (as defined in § 1.468A–2T(c)(1)) for such taxable year. In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(vi) Except as provided in paragraph (d)(1)(vii) of this section, a request for a schedule of deduction amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (d).

(vii) If a request does not comply substantially with the requirements of this paragraph (d), the IRS will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (d) are provided to the IRS within 30 days after

this notification, the request will be considered filed on the date of the original submission. In addition, the request will be considered filed on the date of the original submission in a case in which the information and materials are provided more than 30 days after the notification if the IRS determines that the electing taxpayer made a good faith effort to provide the applicable information or materials within 30 days after notification and also determines that treating the request as filed on the date of the original submission is consistent with the purposes of section 468A. In any other case in which the information or materials necessary to comply substantially with the requirements of this paragraph (d) are not provided within 30 days after the notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (d) are provided.

(2) *Information required.* A request for a schedule of deduction amounts must contain the following information:

- (i) The taxpayer's name, address and taxpayer identification number.
- (ii) Whether the request is for an initial schedule of deduction amounts or a schedule of deduction amounts for a subsequent special transfer.
- (iii) The name and location of the nuclear power plant with respect to which a schedule of deduction amounts is requested.
- (iv) A description of the taxpayer's qualifying interest in the nuclear power plant and the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents.
- (v) The present value of the estimated future decommissioning costs (as defined in § 1.468A-1T(b)(6)) with respect to the taxpayer's qualifying interest in the nuclear power plant as of the first day of the taxable year of the taxpayer in which a transfer is made under this section.

(vi) A description of the assumptions, estimates and other factors that were used by the taxpayer to determine the amount of decommissioning costs, including each of the following if applicable:

(A) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement).

(B) The estimated year in which substantial decommissioning costs will first be incurred.

(C) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see § 1.468A-5T(d)(3) for a definition of substantial completion of decommissioning).

(D) The total estimated cost of decommissioning expressed in current dollars (that is, based on price levels in effect at the time of the current determination).

(E) The total estimated cost of decommissioning expressed in future dollars (that is, based on anticipated price levels when expenses are expected to be paid).

(F) For each taxable year in the period that begins with the year specified in paragraph (d)(2)(vi)(B) of this section (the estimated year in which substantial decommissioning costs will first be incurred) and ends with the year specified in paragraph (d)(2)(vi)(C) of this section (the estimated year in which the decommissioning of the nuclear power plant will be substantially complete), the estimated cost of decommissioning expressed in future dollars.

(G) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars.

(H) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning.

(I) A copy of each engineering or cost study that was relied on or used by the taxpayer in determining the amount of decommissioning costs.

(vii) The taxpayer's pre-2005 nonqualifying percentage (as defined in paragraph (a)(2) of this section).

(viii) The estimated useful life of the nuclear power plant (as such term is defined in paragraph (b)(1)(ii) or (iii) of this section).

(ix) If the request is for a subsequent schedule of deduction amounts, the amount of the previous special transfer and the present value of the estimated future decommissioning costs (as defined in § 1.468A-1T(b)(6)) with respect to the taxpayer's qualifying interest in the nuclear power plant as of the first day of the taxable year of the taxpayer in which the previous special transfer was made.

(x) If the request is for a subsequent schedule of deduction amounts, a copy of all schedules of deduction amounts that relate to the nuclear power plant to which the request relates and that were previously issued to the taxpayer making the request.

(xi) If the request for a schedule of deduction amounts contains a request,

pursuant to § 1.468A-5T(a)(1)(iv), that the IRS rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

(xii) Any other information required by the IRS that may be necessary or useful in determining the schedule of deduction amounts.

(3) *Statement required.* A taxpayer requesting a schedule of deduction amounts under this paragraph (d) must submit a statement that any nonconforming deductions and nonconforming exclusions have reduced the deduction allowed for the special transfer in accordance with paragraph (b)(2) of this section.

(4) *Administrative procedures.* The IRS may prescribe administrative procedures that supplement the provisions of paragraphs (d)(1) and (2) of this section. In addition, the IRS may, in its discretion, waive the requirements of paragraphs (d)(1) and (2) of this section under appropriate circumstances.

§ 1.468A-9T Effective/applicability date and transitional rules (temporary).

(a) *Effective date.* Sections 1.468A-1T through 1.468A-8T are effective December 31, 2007, and apply with respect to taxable years ending on or after such date.

(b) *Transitional rule.* For a taxable year ending on or after January 1, 2006, and before December 31, 2007—

(1) A taxpayer may use any reasonable method consistent with the principles and provisions of section 468A to determine the schedule of ruling amounts or the schedule of deduction amounts;

(2) Application of the provisions of §§ 1.468A-1T through 1.468A-8T will be treated as a reasonable method if, except as otherwise permitted by paragraph (b)(4) of this section, the taxpayer applies all provisions in §§ 1.468A-1T through 1.468A-8T to the taxable year;

(3) The Internal Revenue Service will issue schedules of ruling amounts based on the regulations in effect prior to January 1, 2006, if a taxpayer so requests and if the Internal Revenue Service finds the request to be consistent with the principles and purposes of section 468A; and

(4) The taxpayer's request for a schedule of ruling amounts or a schedule of deduction amounts applicable to the taxable year will be treated as timely if the request is filed before January 1, 2008.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

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

§ 602.101 OMB control numbers.

CFR part or section where identified and described	Current OMB Control No.
(b) * * *	
1.468A-3T	1545-1269 1545-1378 1545-1511
1.468A-4T	1545-0954
1.468A-7T	1545-0954 1545-1511
1.468A-3T(h), 1.468A-7T, and 1.468A-8T(d)	1545-2091

Approved: November 27, 2007.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7-25223 Filed 12-28-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9373]

RIN 1545-BH30

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains a temporary regulation that adds an

additional item of return information that may be disclosed to the Bureau of the Census (Bureau). The regulation adds one item of return information for use in the Bureau's annual Survey of Industrial Research and Development. The temporary regulation provides guidance to IRS personnel responsible for disclosing the information. This regulation facilitates the assistance of the IRS to the Bureau in its statistics programs and requires no action by taxpayers and has no effect on their tax liabilities. The text of the temporary regulation also serves as the text of the proposed regulation (REG-147832-07) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* This regulation is effective on December 31, 2007.

Applicability Date: For dates of applicability, see § 301.6103(j)(1)-1T(e).

FOR FURTHER INFORMATION CONTACT: Glenn Melcher, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1)(A), upon written request from the Secretary of Commerce, the Treasury Secretary is to furnish to the Bureau of the Census (Bureau) return information as may be prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

This document adopts a temporary regulation that authorizes the IRS to disclose an additional item of return information, which has been requested by the Secretary of Commerce, that is necessary for the Bureau's annual Survey of Industrial Research and Development.

The temporary regulation in this issue of the **Federal Register** amends the Procedure and Administration Regulations (26 CFR part 301) relating to Internal Revenue Code (Code) section 6103(j)(1)(A). This amendment to the regulation contains rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and conducting related statistical activities authorized by law.

Explanation of Provisions

By letter dated February 6, 2006, the Secretary of Commerce requested that

an additional item of return information be disclosed to the Bureau for purposes related to the Bureau's annual Survey of Industrial Research and Development. Specifically, the Secretary of Commerce requested categorical information on total qualified research expenses in three ranges: Greater than zero, but less than \$1 million; greater than or equal to \$1 million, but less than \$3 million; and, greater than or equal to \$3 million. The request indicates that because of the small number of companies with research and development expenses it is difficult to design an efficient sample that produces reliable estimates. Data on total qualified research expenses from the Form 6765, Credit for Increasing Research Activities, will assist the Bureau in identifying companies that are actively engaged in research and development activities for the annual Survey of Industrial Research and Development.

Special Analyses

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

Drafting Information

The principal author of this temporary regulation is Glenn Melcher, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** Section 301.6103(j)(1)–1T is amended by revising paragraphs (a), (b), and (e) and removing paragraph (f) to read as follows:

§ 301.6103(j)(1)–1T Disclosure of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) through (b)(3)(xxiv) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(a) and (b)(1) through (b)(3)(xxiv).

(xxv) From Form 6765 (when filed with corporation income tax returns)—total qualified research expenses.

* * * * *

(e) *Effective/applicability date.* This section is applicable to disclosures to the Bureau of Economic Analysis on or after July 6, 2006. The amendment to paragraph (b)(3)(xxv) of this section is applicable to disclosures to the Bureau of the Census on or after December 31, 2007. The applicability of the amendment to paragraph (b)(3)(xxv) expires on or before December 28, 2010.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–25129 Filed 12–28–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 11]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2008

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2006 rail industry random testing positive rates were 0.60 percent for drugs and 0.13 percent for alcohol. Because the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2008, through December 31, 2008, will remain

at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2008, through December 31, 2008.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT:

Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (telephone 202 493–6313); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (telephone 816 561–2714).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2008 Minimum Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year. See 49 CFR 219.602, 608.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad

employees if the industry-wide random alcohol violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent of covered railroad employees whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2008, through December 31, 2008, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.060 in 2006 and .073 in 2005). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2008, through December 31, 2008, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.013 in 2006 and .017 in 2005). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 17, 2007.

Joseph H. Boardman,
Administrator.

[FR Doc. E7–25353 Filed 12–28–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070612190–7684–02]

RIN 0648–AV58

Atlantic Highly Migratory Species; 2008 Atlantic Bluefin Tuna Quota Specifications and Effort Controls

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

ACTION: Final rule.

SUMMARY: NMFS announces the final rule to set 2008 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery, including quotas for each of the established domestic fishing categories and effort controls for the General category and Angling category. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic

management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The rule is effective January 30, 2008, except that the Angling category retention limit found under the heading Angling Category Effort Controls is effective January 30, 2008 through December 31, 2008, and the General category retention limit found under the heading General Category Effort Controls is effective June 1, 2008, through August 31, 2008.

ADDRESSES: Supporting documents, including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) and the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), are available from Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or at the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the ATCA. The ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and the ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

Background information about the need for the BFT quota specifications and effort controls for the 2008 fishing year (January 1 through December 31, 2008) was provided in the preamble to the proposed rule (72 FR 56036, October 2, 2007) and is not repeated here.

The 2008 annual specifications are necessary to implement the 2006 ICCAT quota recommendation, as required by the ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. This action is published in accordance with the framework procedures set forth in the Consolidated HMS FMP and is supported by the analytical documents

prepared for the Consolidated HMS FMP and for the 2007 BFT specifications and effort controls. Copies of these documents are available from NMFS (see **ADDRESSES**).

In the final 2007 fishing year BFT specifications (72 FR 33401, June 18, 2007), NMFS modified the baseline landings quota to 1,165.12 mt to implement the 2006 ICCAT recommendation and set the category subquotas per the allocations established in the Consolidated HMS FMP. The baseline quotas are as follows: General category—548.8 mt; Harpoon category—45.4 mt; Purse Seine category—216.7 mt; Angling category—229.5 mt; Longline category—94.4 mt; and Trap category—1.2 mt. An additional 29.1 mt is allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

The baseline Angling category quota of 229.5 mt is further subdivided as follows: School BFT—119 mt, with 45.8 mt to the northern area (north of 39°18' N. latitude), 51.2 mt to the southern area (south of 39°18' N. latitude), plus 22 mt held in reserve; large school/small medium BFT—105.2 mt, with 49.6 mt to the northern area and 55.6 mt to the southern area; and large medium/giant BFT—5.3 mt, with 1.8 mt to the northern area and 3.5 mt to the southern area. The 25–mt Northeast Distant gear restricted area (NED) set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude). Thus, the baseline Longline category quota of 94.4 mt is subdivided as follows: 37.8 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 56.6 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED. NMFS accounts for landings under this additional quota separately from other landings under the Longline north subcategory.

The baseline landings quota and category subquotas are effective until changed, for instance, as a result of a potential new ICCAT BFT Total Allowable Catch (TAC) recommendation made at its upcoming 2008 Annual Meeting. Consistent with the Consolidated HMS FMP, and through this action, NMFS is making underharvest adjustments for the 2008 fishing year.

Changes from the Proposed Rule

Since 1997, NMFS has implemented General category RFDs to extend the General category fishing season. NMFS has received comment from fishery participants that RFDs are not necessary, as BFT landings in the last several years have been low and not at a pace that warrants NMFS control for market purposes. For the 2008 fishing year, NMFS has decided not to implement RFDs via this final rule. For more information, please see the Comments and Responses section. If NMFS determines that action is needed during the fishing year to extend the General category fishery, NMFS may publish an inseason action (under 50 CFR 635.23(a)(4)) to decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel.

2008 Quota Specifications

NMFS anticipates that the 2007 fishing year (June 1, 2007–December 31, 2007) underharvest will be substantial, based on current landings information and communication with BFT fishermen, and given the relatively low BFT harvest rates in recent years. However, the current ICCAT recommendation limits the amount of underharvest the United States may carry over for 2008 to 595.1 mt.

Landings of large medium and giant BFT (measuring 73 inches (185.4 cm) or greater) landed in the commercial BFT fisheries and under the Angling category trophy fishery are as follows, through November 26, 2007: General category—87.9 mt; Harpoon category—12.1 mt; Longline category—26.4 mt (18 mt in the North, 2.9 mt in the Northeast Distant gear restricted area (NED), and 5.5 mt in the South]; Trap category—0 mt; and Purse Seine category—28.0 mt. The recreational Angling category fishery is still underway and final estimates from the Large Pelagic Survey (LPS) are not expected to be available until the end of the year. Once LPS estimates are available, NMFS may adjust 2008 recreational measures (i.e., retention limits) and quotas or make necessary adjustments for the following year's fishery (i.e., the 2009 fishing year) based on the LPS data and analyses, the needs of the fishery, and other factors (such as the 2008 ICCAT recommendation, research needs, etc.), as appropriate. Currently, however, preliminary 2007 landings estimates for the fishery indicate that the 2007 fishing year underharvest is substantial, and that the full 595.1 mt of underharvest (consistent with the ICCAT

recommended limit) will be available for carryover to the 2008 fishing year.

NMFS establishes the final quota specifications as proposed, i.e., carries over 595.1 mt of BFT underharvest from the 2007 fishing year to the 2008 fishing year quota, and distributes that underharvest to: (1) Allow for potential transfer of a portion (up to 15 percent) of the 2008 U.S. quota to other ICCAT Contracting Parties and other domestic management objectives, if warranted; (2) ensure that the Longline category has sufficient quota to operate during the 2008 fishing year after the required accounting for BFT dead discards; and (3) provide the non-Longline quota categories the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP. As proposed, this final action applies 53.6 mt of BFT underharvest to cover the anticipated pelagic longline fishery landings during the 2008 fishing year. Additionally, this action places 178.5 mt (i.e., 15 percent of 1,190.12 mt) of 2007 fishing year underharvest in the Reserve for potential ICCAT transfer purposes and other domestic management objectives. This action distributes the remainder of the quota carryover (363 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with their FMP allocations.

Initial quota specifications for the 2008 fishing year as follows: General category—740.0 mt; Harpoon category—61.2 mt; Purse Seine category—292.2 mt; Angling category—309.5 mt; Longline category—56.7 mt; and Trap category—1.6 mt. Additionally, 207.6 mt are allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

The General category quota of 740.0 mt is divided per the time period allocations established in the Consolidated FMP, i.e., 39.2 mt (5.3 percent) for the period beginning January 1, 2008, and ending January 31, 2008, 370.0 mt (50 percent) for the period beginning June 1, 2008, and ending August 31, 2008, 196.1 mt (26.5 percent) for the period beginning September 1, 2008, and ending September 30, 2008, 96.2 mt (13 percent) for the period beginning October 1, 2008, and ending November 30, 2008; and 38.5 mt (5.2 percent) for the period beginning December 1, 2008, and ending December 31, 2008.

The Angling category quota of 309.5 mt is further subdivided as follows: School BFT—119 mt, with 45.8 mt to the northern area (north of 39°18' N.

latitude), 51.2 mt to the southern area (south of 39°18' N. latitude), plus 22 mt held in reserve; large school/small medium BFT—183.4 mt, with 86.6 mt to the northern area and 96.8 mt to the southern area; and large medium/giant BFT—7.1 mt, with 2.4 mt to the northern area and 4.7 mt to the southern area.

The Longline category quota of 56.7 mt is subdivided as follows: 22.7 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 34.0 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED. NMFS will account for landings under this additional quota separately from other landings under the Longline north subcategory.

Once complete information, including recreational landings estimates, is available for the 2007 fishing year, NMFS may need to publish quota adjustments or other inseason management measures, as necessary, in 2008 for the 2008 fishing year.

General Category Effort Controls

Because of the large quota available for the General category, NMFS increases the retention limit of BFT for the January and June-August subperiods from the default one-fish retention limit. Therefore, persons aboard vessels permitted in the General category may retain three large medium or giant BFT (measuring 73 inches (185.4 cm) or greater) per vessel per day/trip from June 1, 2008, through August 31, 2008. Anticipating that this action might not be effective by January 1, 2008, NMFS published an inseason action to adjust the General category retention limit to three large medium or giant BFT per vessel per day/trip effective October 1, 2007, through January 31, 2008 (72 FR 61565, October 31, 2007). The BFT retention limit may be adjusted via inseason action, if warranted, under § 635.23(a)(4).

Angling Category Effort Controls

This final rule establishes an Angling category retention limit to one school BFT (27 inches (68.6 cm) to less than 47 inches (119.4 cm)), and two large school/small medium BFT (i.e., two BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel per day/trip. This retention limit is effective for persons aboard vessels permitted in the Angling category from January 30, 2008 through December 31, 2008. This retention limit may be adjusted via inseason action, if warranted, under § 635.23(b)(3).

Comments and Responses

Below, NMFS summarizes and responds to all comments received on the proposed quota specifications and effort controls for the General and Angling categories. In addition, NMFS received comments on issues that were not considered part of this rulemaking. For example, NMFS received comment that the pelagic longline incidental BFT retention limits should be raised to reduce regulatory discard of commercial-sized BFT. In contrast, NMFS received a request from an environmental organization to take action to limit BFT mortality on pelagic longline gear and to remove the exemption from target catch requirements that currently applies to pelagic longline vessels fishing in the Northeast Distant gear restricted area until the 25-mt set-aside for that area is met. Another commenter expressed frustration with Purse Seine fishing in Cape Cod Bay and alleged unchecked violation of BFT fishing regulations in general. NMFS acknowledges receipt of these comments, although the issues raised are not addressed in this action as they were not considered part of this rulemaking.

A. BFT Quotas

Comment 1: NMFS received a range of comments on the quota specifications. Most of the commenters wrote or spoke about the need for greater conservation measures, both for juvenile and spawning-sized BFT. One commenter opposed carryover of underharvest in any fishery from one year to the next. An environmental organization representative requests that NMFS keep landings of school fish low in 2008 to contribute to rebuilding the BFT population and to ensure a recreational fishery in the last year of the four-year (2007–2010) balancing period over which ICCAT recommends limiting school BFT landings to 10 percent of the TAC (i.e., an average of 119 mt annually). In contrast, one commenter asked if NMFS would adjust the school BFT subquota (upward of the proposed 119 mt) if landings estimates indicate that less than 119 mt will have been taken in the 2007 fishing year (i.e., if NMFS could increase the school BFT quota for 2008 while maintaining average landings of 119 mt annually over the 2007–2010 balancing period).

Response: Carryover of underharvest (limited to no more than 50 percent of the U.S. TAC) is consistent with both the ICCAT recommendation and the BFT quota regulations. The specifications included in this rule reflect application of underharvest from

the 2007 fishing year to the baseline quotas that were established in the 2007 final specifications (72 FR 33401, June 18, 2007). The distribution of the 595.1-mt underharvest provides for several existing and potential management needs, namely: (1) Setting aside sufficient quota for a potential transfer to another ICCAT Contracting Party, if warranted; (2) providing sufficient quota for pelagic longline operations; (3) appropriately accounting for dead discards; and (4) distributing the remainder per the Consolidated HMS FMP allocation. Reduction of the overall quota, or to category quota and subquota allocations, would involve a regulatory change and/or amendment to the Consolidated HMS FMP. The final Angling category school BFT subquota is 119 mt. Final LPS estimates for the 2007 fishing year will not be complete until after preparation of this final rule. NMFS does not currently have information that would support an increase to the Angling category school BFT subquota for the 2008 fishing year. As mentioned above, NMFS may need to publish a quota adjustment or other inseason action in 2008 once landings information for the 2007 fishing year is complete. However, as 2007 is the first year of the current 4-year balancing period, NMFS has considerable flexibility over the next 3 years to manage the school BFT fishery (including adjustment of retention limits) consistent with the ICCAT recommendation that limits tolerance for school BFT landings to 10 percent of the U.S. TAC, calculated on a 4-year average (i.e., 2007–2010).

Comment 2: Some commenters opposed the concept of a U.S. quota transfer to another ICCAT-contracting party. An industry representative suggested that NMFS fully allocate the quota carryover amount to the quota categories rather than holding 15-percent of the TAC (178.5 mt) in the Reserve, and suggests that NMFS subsequently consult with representatives of applicable quota categories if and when a quota transfer request is received. This commenter anticipates that such a request would be initiated by industry in consultation with the industry of another ICCAT Contracting Party.

Response: The authority to transfer BFT quota to other ICCAT contracting parties originates with a 2006 ICCAT recommendation, which allows a contracting party to transfer up to 15 percent of its TAC to another Contracting Party. NMFS notes that any transfer requests would be initiated by other ICCAT member countries to the U.S. Government. In response to a

transfer request, the United States (through NMFS) would evaluate several factors, including the projected ability of U.S. vessels to harvest the U.S. TAC during the fishing year and potential impacts to the stock, in a separate action and consider public input on that action. In these specifications, NMFS is placing 178.5 mt (15 percent of the U.S. TAC) of 2007 fishing year underharvest in the Reserve so that, if the United States were to approve a transfer, the quota would be taken from the Reserve and not from category-specific quotas. NMFS maintains that, should a transfer to another ICCAT contracting party be considered and approved, it should be taken from the Reserve, which NMFS specifically holds for purposes of inseason or annual adjustments and fishery research.

Because of the ICCAT-recommended limit on quota carryover and given the recent trend of substantial U.S. TAC underharvest, distribution of 178.5 mt of carryover to individual quota categories would not result in substantially greater future fishing opportunities than holding that amount in Reserve. Further, the regulations regarding determination criteria and annual adjustment of the BFT quota at §§ 635.27(a)(8) and 635.27(a)(9) allow NMFS to transfer quotas among categories based on the several criteria (such as a review of landing trends, the projected ability of the vessels fishing under a particular category quota to harvest the additional amount of BFT before the end of the fishing year, the estimated amounts by which quotas for other categories might be exceeded, the effects of the adjustment on accomplishing the objectives of the fishery management plan, etc.). Therefore, should a situation arise in which a BFT domestic quota transfer from the Reserve to a quota category is needed to avoid exceeding that category's quota, NMFS could take action as appropriate.

The carryover of BFT underharvest that NMFS proposed, and finalizes in this action, is consistent with the Consolidated HMS FMP and with the 2006 ICCAT recommendation to limit carryover to 50 percent of an ICCAT contracting party's initial TAC. A regulatory amendment would be required for NMFS not to carry forward unharvested quota from one year to the next.

B. General Category Effort Controls

Comment 1: As described above, NMFS received comments that the setting of RFDs is not necessary, as BFT landings in the General category have been low, and not at a pace that

warrants NMFS control for market purposes.

Response: NMFS agrees that overall landings in the last few years have been lower than they have since the late 1990s, when NMFS began to implement RFDs to extend the General category season for as long as possible to provide fishing opportunities over an expanded temporal and geographic range. Due to low landings rates in recent years and the fact that the fishery has not needed to be closed, and based on the expectation that landings rates in the 2008 fishing season will be similar, NMFS is not implementing RFDs through this final rule. NMFS may use its inseason action authority at 50 CFR 635.23(a)(4) to adjust the General category retention limit if it determines that action is needed during the fishing year to extend the General category fishery.

Comment 2: One commenter suggested, due to continued underharvest of BFT, that a General category daily retention limit of two rather than three BFT measuring 73 inches or greater (as proposed) per vessel per day/trip, would be appropriate, while still meeting the needs of commercial BFT fishermen.

Response: NMFS acknowledges the recent low catches in the General category fishery. NMFS is contributing to research and monitoring efforts to determine the reasons for the apparent lack of availability of BFT to the U.S. fishery, i.e., whether due to lower stock abundance or changes in BFT distribution. In the meantime, NMFS is setting the General category daily retention limit at three BFT to allow increased opportunities to harvest the General category quota during periods when catch rates have historically been low, and to avoid accumulation of unused quota.

C. Angling Category Effort Controls

Comment 1: NMFS received a range of comments on the Angling category effort controls. Some commenters supported the Angling category retention limit as proposed, and some expressed that anglers should be limited to one fish per day. Related to the comment on the Angling category school BFT subquota in Section A, one commenter asked if the daily retention limit for school BFT could be increased without risking the 4-year average of 119 mt of landings being exceeded.

Response: NMFS currently does not have complete landings estimates for the 2007 fishing year and therefore does not have sufficient information to support a change to the 2008 fishing year Angling category retention limit.

NMFS may determine, once 2008 estimates are complete, that the retention limit should be adjusted in order to meet the limit on school BFT over the 4-year balancing period. NMFS has the authority either to make inseason adjustments to the Angling category quota during the 2008 fishing year, or, depending on the results of the LPS data and analyses and the needs of the fishery, may make necessary adjustments (such as retention limits, quotas, and subquotas) in the 2009 fishing year specifications and effort controls.

Classification

NMFS publishes these final specifications and effort controls under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries, and are consistent with the Magnuson-Stevens Act and its National Standards.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7-25256 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625-7696-02]

RIN 0648-XC84

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2008 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2008 Quota Adjustments; 2008 Summer Flounder Quota for Delaware

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2008 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including commercial scup possession limits. This action prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2008 due to continued quota repayment from previous years' overages.

The actions of this final rule are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The intent of this action is to establish harvest levels and other management measures to ensure that target fishing mortality rates (F) or exploitation rates, as specified for these species in the FMP, are not exceeded. In addition, this action implements measures that ensure continued rebuilding of these three overfished species and ends overfishing in the summer flounder fishery.

DATES: Effective January 1, 2008, through December 31, 2008.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room

2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the FMP developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The regulations outline the process for specifying the annual catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions,

possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or an exploitation rate (i.e., the proportion of fish available at the beginning of the year that may be removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2008 specifications for these fisheries was provided in the proposed specifications (72 FR 64023; November 14, 2007). That information is not repeated here.

NMFS will establish the 2008 recreational management measures for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

Summer Flounder

The FMP requires that annual fishing levels (i.e., Total Allowable Landings or TAL) must achieve at least a 50-percent probability of constraining harvests to an F rate that produces the maximum yield per recruit, or F_{MAX} . The best

available scientific information from the 2007 updated summer flounder assessment conducted by the Southern Demersal Working Group (SDWG), using the methods and models recommended for continued use by the NMFS Office of Science and Technology during its 2006 peer review, indicates that F_{MAX} for 2008 is 0.28. However, the best available scientific information also indicates that, for 2008, a TAL set lower than the F_{MAX} level is needed to ensure that the rebuilding objective of 197.2 million lb (89,448 mt) spawning stock biomass (SSB) can be attained by the rebuilding period end date of January 1, 2013. For 2008, the $F_{TARGET}=F_{REBUILD}$ at 0.199.

The TAL associated with the target F (i.e., $F_{REBUILD}$ for 2008) is allocated 60 percent to the commercial sector and 40 percent to the recreational sector by the FMP. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2008.

This final rule implements the specifications contained in the November 14, 2007, proposed rule—a summer flounder TAL of 15.77 million lb (7,153 mt) for 2008. This TAL has a 75-percent probability of achieving the

$F_{REBUILD}$ target of 0.199, and a 99-percent probability that the overfishing threshold, $F_{MAX}=0.28$, will not be exceeded in 2008.

Three research projects that would utilize the full summer flounder research set-aside (RSA) of 233,192 lb (106 mt) have been conditionally approved by NMFS and are currently awaiting notice of award. After deducting this RSA, the TAL is divided into a commercial quota of 9,322,085 lb (4,228 mt) and a recreational harvest limit of 6,214,723 lb (2,819 mt). If a proposed project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the summer flounder TAL through publication in the **Federal Register**.

Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2007, plus any previously unaccounted for overages from January–December 2006. Table 1 summarizes, for each state, the commercial summer flounder percent share, the 2008 commercial quota (both initial and less the RSA), the quota overages as described above, and the resulting final adjusted 2008 commercial quota less the RSA.

TABLE 1.—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2008

State	Percent share	Initial quota		Initial quota less RSA		2007 Quota overages (through 10/31/07) ¹		Adjusted quota less RSA	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	4,500	2,041	4,434	2,011	0	0	4,434	2,011
NH	0.00046	44	20	43	19	0	0	43	19
MA	6.82046	645,352	292,732	635,809	288,403	20,591	9,340	615,218	279,063
RI	15.68298	1,483,924	673,108	1,461,981	663,154	0	0	1,461,981	663,154
CT	2.25708	213,565	96,873	210,407	95,441	0	0	210,407	95,441
NY	7.64699	723,558	328,206	712,859	323,353	15,375	6,974	697,484	316,379
NJ	16.72499	1,582,519	717,830	1,559,118	707,216	0	0	1,559,118	707,216
DE	0.01779	1,683	764	1,658	752	55,556	25,200	–53,898	–24,448
MD	2.03910	192,940	87,517	190,087	86,223	0	0	190,087	86,223
VA	21.31676	2,016,992	914,907	1,987,166	901,379	0	0	1,987,166	901,379
NC	27.44584	2,596,925	1,177,965	2,558,524	1,160,547	0	0	2,558,524	1,160,547
Total ²	100.00	9,462,001	4,291,964	9,322,086	4,228,498	91,522	41,514	9,284,462	4,211,431

¹ 2007 quota overage is determined through comparison of landings for January through October 2007, plus any landings in 2006 in excess of the 2006 quota (that were not previously addressed in the 2007 specifications), with the 2007 emergency rule quota for each state (72 FR 2458, January 19, 2007). For Delaware, includes continued repayment of overharvest from 2007 and previous years.

² Total quota is the sum of all states having allocation. A state with a negative number has a 2008 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery in a state has been closed. The intent of the incidental

catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2007 final

summer flounder specifications because NMFS does not have authority to establish such subcategories.

Delaware Summer Flounder Closure

Table 1 indicates that, for Delaware, the amount of the 2007 summer

flounder quota overage (inclusive of overharvest from previous years) is greater than the amount of commercial quota allocated to Delaware for 2008. As a result, there is no quota available for 2008 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2008, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder fisheries permits are prohibited for the 2008 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2008 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

The 2008 fishing season is year 1 of the 7-year, constant F strategy scup rebuilding plan implemented by Amendment 14 to the FMP (72 FR 40077; July 23, 2007). The target exploitation rate for scup in 2008 is 9 percent, which will result in an $F=0.10$,

as called for under the rebuilding plan. The FMP specifies that the Total Allowable Catch (TAC) associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector, i.e., TAC minus discards equals TAL. The commercial TAC, discards, and TAL (commercial quota) are then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November–December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2008.

This final rule implements the specifications contained in the November 14, 2007, proposed rule: A 9.9-million-lb (4,491-mt) scup TAC and a 7.34-million-lb (3,329-mt) scup TAL. The TAC is divided into the commercial (78 percent) and recreational (22 percent) allocations, in accordance with the FMP; then the respective discard estimates are subtracted to yield the preliminary TAL. After deducting 214,000 (97 mt) of RSA for the three approved research projects, the initial TAL is a commercial quota of 5,248,000 lb (2,381 mt) and a recreational harvest limit of 1,830,920 lb (830 mt). If a

proposed project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the scup TAL through publication in the **Federal Register**.

Consistent with the revised quota setting procedures established for the FMP (67 FR 6877, February 14, 2002), scup overages are determined based upon landings for the Winter I and Summer 2007 periods, plus any previously unaccounted for landings from January–December 2006. Table 2 presents the final 2008 commercial scup quota for each period and the reported 2007 landings for the 2007 Winter I and Summer periods. There was no overage of the Winter I quota; however, an overage of 624,876 lb (283 mt) occurred during the Summer quota period. As a result, the 2008 Summer period quota is reduced by this amount.

On July 24, 2007, (72 FR 40263) NMFS announced a transfer of unharvested quota from the Winter I to the Winter II 2007 quota period. Per the quota accounting procedures, after June 30, 2008, NMFS will compile all available landings data for the 2007 Winter II quota period and compare the landings to the 2007 Winter II quota period allocation, as adjusted by the aforementioned transfer. Any overages will be determined and deductions, if needed, will be made to the Winter II 2008 allocation and published in the **Federal Register**.

TABLE 2.—SCUP PRELIMINARY 2007 COMMERCIAL LANDINGS BY QUOTA PERIOD

Quota period	2007 Quota		Reported 2007 Landings through 10/31/07		Preliminary Overages as of 10/31/07	
	lb	mt	lb	mt	lb	mt
Winter I	4,012,895	1,820	3,386,505	1,536	0	0
Summer	3,464,914	1,572	4,089,790	1,855	624,876	283
Winter II	1,417,991	643	N/A	N/A	N/A	N/A
Total	8,895,800	4,035	7,476,295	3,391	N/A	N/A

N/A = Not applicable.

Table 3 presents the commercial scup percent share, 2008 TAC, projected discards, 2008 initial quota (with and without the RSA deduction), overage deductions (as necessary), and initial possession limits, by quota period. This

final rule continues the status quo Winter I period (January–April) per-trip possession limit of 30,000 lb (13.6 mt), and a Winter II period (November–December) initial per-trip possession limit of 2,000 lb (907 kg). The Winter I

per-trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested.

TABLE 3.—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2008 BY QUOTA PERIOD

Quota period	Per-cent share	Total allowable catch		Discards		Initial quota		Initial quota less overages (through 10/31/2007) ¹		Adjusted quota less overages and RSA		Possession limits (Per trip) ²	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	3,483,394	1,580	1,019,486	462	2,463,908	1,118	N/A	N/A	2,367,373	1,074	30,000	13,608
Summer	38.95	3,007,719	1,364	880,270	399	2,127,449	965	1,502,573	682	1,419,220	644	N/A	N/A

TABLE 3.—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2008 BY QUOTA PERIOD—Continued

Quota period	Per-cent share	Total allowable catch		Discards		Initial quota		Initial quota less overages (through 10/31/2007) ¹		Adjusted quota less overages and RSA		Possession limits (Per trip) ²	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter II	15.94	1,230,887	558	360,244	163	870,643	395	N/A	N/A	836,531	379	2,000	907
Total ³	100.0	7,722,000	3,503	2,260,000	1,025	5,462,000	2,478	N/A	N/A	4,623,124	2,097	N/A	N/A

¹ An overage of 624,876 lb (283 mt) occurred during the 2007 Summer quota period.

² The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**.

³ Metric tons are as converted from pounds and may not necessarily add due to rounding.

N/A = Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.120(a)(3), this final rule maintains the Winter II possession

limit-to-rollover amount ratios that were in place for the 2007 fishing year, as shown in Table 4. The Winter II possession limit will increase by 1,500

lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 4.—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

For 2008, the target exploitation rate for black sea bass is 25 percent. The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2008.

This final rule implements the specifications contained in the November 14, 2007, proposed rule: A 4.22-million-lb (1,194-mt) black sea bass TAL. After deducting 85,790 lb (39 mt) of RSA for the three approved research projects, the TAL is divided into a commercial quota of 2,025,763 lb (919 mt) and a recreational harvest limit of 2,108,447 lb (9569 mt). If a proposed project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the black sea bass TAL through publication in the **Federal Register**. Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the period January–September 2007, plus

any previously unaccounted for landings from January–December 2006. There were no overages for either period; thus, no overage deduction adjustment to the 2008 commercial quota is necessary.

Comments and Responses

NMFS received 25,443 comments during the comment period for the November 14, 2007, proposed rule. Of these, 20,159 comments were received through the prescribed methods outlined in the proposed rule: Electronic submission via the Federal eRulemaking Portal (<http://www.regulations.gov>); fax; standard mail; and hand delivery. An additional 5,284 were sent via e-mail to the Regional Administrator. Though these comments were not supplied through the prescribed methods, they were form letters that make the same points as other comments received through the established public comment system and are therefore addressed in this final rule's responses to comments. In addition, one comment letter contained over 14,000 signatories. This letter was treated as 14,000+ comments for the purposes of the total comments received enumeration listed above.

Comments were received from the representatives of several conservation groups, recreational and commercial fishery associations and advocacy groups, and private citizens. The vast majority (99 percent) of comments received were from individual members of various conservation groups and from a conservation-based recreational fishery advocacy group who urged NMFS to adopt a summer flounder TAL lower than the 15.77-million-lb (7,153-mt) implemented by this final rule.

Only comments that were applicable to the proposed 2008 specifications, including the analyses used to support these specifications, are addressed in this preamble. The majority of the comments submitted contained the same or similar language; therefore, the significant issues and concerns have been summarized and responded to here.

Comment 1: Many commenters suggested that a 15.77-million-lb (7,153-mt) summer flounder TAL for 2008 has less than the required regulatory and 2000 Federal court-ordered ¹ 50-percent probability of constraining fishing mortality below the overfishing level

¹ *Natural Resources Defense Council v. Daley* Civil NO. 1:99 CV00221(JLG).

($F_{MAX} = 0.28$) in 2008. These commenters advocated for a lower 2008 TAL and suggested that the TAL be established anywhere from a low of 8.0 million lb (3,629 mt) to a high of 12.9 million lb (5,851 mt). The majority of commenters advocating for a lower TAL indicated that NMFS should implement the 11.64-million-lb (5,280-mt) TAL, on the low end of the Summer Flounder Monitoring Committee's (Monitoring Committee) recommended TAL range.

Response: NMFS disagrees that the proposed TAL, which is implemented through this final rule, fails to meet the regulatory and legal requirements to prevent overfishing. Analysis conducted by the Northeast Fisheries Science Center (NEFSC) indicates that a 15.77-million-lb (7,153-mt) TAL has a 99-percent probability of not exceeding the overfishing level ($F_{MAX} = 0.28$) in 2008. Responses to comments 2 through 7 contain additional justification for the selection of the TAL implemented by this final rule.

Comment 2: Many commenters indicated that they believe the 15.77-million-lb (7,153-mt) summer flounder TAL has less than a 50-percent probability of meeting the $F_{REBUILD}$ target recommended by the Monitoring Committee ($F_{REBUILD}$ adjusted = 0.143) and is, therefore, in violation of the summer flounder regulations and Federal court order.

Response: Contrary to the interpretation of the commenters, the specific regulatory and Federal court-ordered requirement for probabilities of success regarding the annual TAL is limited to providing at least a 50-percent probability of not exceeding the overfishing threshold ($F_{MAX} = F_{MSY} = 0.28$). There is no specific regulatory or statutory requirement that NMFS must meet regarding probabilities for success relative to $F_{REBUILD}$. The Council and NMFS may choose from among various alternative rebuilding strategies. Analysis provided by the Monitoring Committee indicates that a 15.77-million-lb (7,153-mt) TAL has a 75-percent probability of not exceeding $F_{REBUILD} = 0.199$, which is lower than $F_{MAX} = 0.28$.

Comment 3: Several commenters relayed that they expected a 15.77-million-lb (7,153-mt) summer flounder TAL in 2008 to prevent sufficient continued stock growth and will prevent the rebuilding target of 197.2 million lb (89,448 mt) SSB from being attained by the January 1, 2013, rebuilding period end date, as required by the Magnuson-Stevens Act.

Response: Stock projections using a 15.77-million-lb (7,153-mt) summer flounder TAL, based on $F_{REBUILD} = 0.199$

in 2008, indicate that the stock can achieve the rebuilding target biomass level by January 1, 2013. This TAL and F in 2008 provide a 75-percent probability that the rebuilding target will be met within the required time frame. The responses to comments 5 and 6 provide additional information germane to stock growth and rebuilding.

Comment 4: Many commenters asserted that overfishing has occurred in the summer flounder fishery since 1982 and that a 15.77-million-lb (7,153-mt) summer flounder TAL will not end overfishing in 2008.

Response: NMFS reiterates that a 15.77-million-lb (7,153-mt) summer flounder TAL is projected to have a 99-percent probability of constraining harvest below the overfishing level in 2008. In addition, the first definition of overfishing for summer flounder was not established until the adoption of Amendment 2 to the FMP, which occurred in 1991. NMFS acknowledges that exploitation on the summer flounder stock was high, prior to the establishment of an overfishing definition, but overfishing was not assessed relative to an established threshold. The Sustainable Fisheries Act of 1996 established a requirement for rebuilding periods for U.S. fisheries that were determined to be overfished. Overfishing has occurred in the summer flounder fishery each year of the rebuilding period for which complete data are available, 2000–2006. Evaluation of the 2007 fishery performance will not be available until mid-2008, after the commercial and recreational fishery data has been compiled and audited.

The level of overfishing has decreased substantially over the course of the rebuilding period, even with the retrospective pattern that has resulted in estimated F 's increasing for previous years when more recent data are added to the assessment model. Until 2006, the TAL was set at the F_{MAX} level with only a 50-percent probability for success in all but one year (i.e., the 2004 fishing year, for which the TAL was set at the F_{MAX} level with a 75-percent probability for success). For the 2007 fishery, the TAL was established to achieve a lower $F_{REBUILD}$ level, with a 75-percent probability of success of achieving that lower target. Over the course of the rebuilding period, NMFS and the Council have been successful at substantially reducing fishing mortality. NMFS expects, based on the analysis of the 2008 TAL and the associated 99-percent probability of success, that overfishing will not occur in 2008. NMFS is also prepared to further constrain or close the recreational

fishery in Federal waters of the EEZ during or prior to the fishing season, if needed, to further insure that 2008 mortality objectives for the summer flounder fishery are met and to ensure that overfishing does not occur.

Comment 5: Some commenters expressed concern that the 15.77-million-lb (7,153 mt) summer flounder TAL fails to compensate directly for the retrospective pattern in the stock assessment modeling approach and does not provide for an adequate buffer between the maximum sustainable yield and overfishing level in compensation for the model uncertainty.

Response: The advice of the SDWG in regards to the retrospective pattern for the 2007 stock assessment update was, "Given the persistent retrospective underestimation of fishing mortality in the [stock] assessment, [fishery] managers should consider adopting a lower TAL for 2008 than indicated by the median projection results to reduce the risk that overfishing will occur." Similarly, the advice of the 2006 biological reference point peer review was that, "The [peer review] Panel does not find that it is necessary to make an explicit adjustment for the retrospective pattern in the VPA [Virtual Population Analysis; stock assessment model] results. The pattern diminishes in the last year [2005], its cause is not clear, and past patterns in the opposite direction have also diminished after a few years." The median projection result for 2008 is the TAL resulting from a 50-percent probability of achieving $F_{MAX} = 0.28$ and would yield a TAL of 23.8 million lb (10,807 mt). NMFS has followed the advice from the independent stock assessment review body and recent peer review and set the TAL for 2008 at the lower $F_{REBUILD} = 0.199$ level, with a further reduction by using the 25th percentile projection (i.e., a 75-percent probability of achieving the $F_{REBUILD}$). This is the most risk-averse approach yet applied to setting a summer flounder TAL since the rebuilding period began in 2000.

NMFS acknowledges that the 2008 TAL does not explicitly adjust for the retrospective pattern as was recommended by the Monitoring Committee. However, the TAL implemented by this rule is consistent with the advice of the independent stock assessment body and the SDWG, and reduces the TAL from the minimum level required by the regulations to lower the risk that overfishing will occur in 2008.

The TAL provides for high probabilities of success relative to both the overfishing threshold (F_{MAX}) and the necessary rebuilding F ($F_{REBUILD}$) to

ensure continued stock rebuilding. Similarly, the TAL does provide a precautionary approach by employing the $F_{REBUILD}$ rather than the F_{MAX} level, and by utilizing a probability higher than the 50-percent required, at 99-percent, of not exceeding the overfishing threshold (F_{MAX}). This TAL has been reduced 33.7 percent from the median projection (i.e., 50-percent probability of success) $F_{MSY}=F_{MAX}$ level to compensate for uncertainty.

Comment 6: The majority of the commenters suggested that implementing a TAL higher than the Monitoring Committee's recommended TAL range is contrary to scientific advice. These commenters asserted that this is in violation of the reauthorized Magnuson-Stevens Act that the Council may not set annual catch limits higher than the recommendations of the Council's Scientific and Statistical Committee (SSC), ignores the best available science as required by National Standard 2 of the Magnuson-Stevens Act, and is inconsistent with public hearing documents for proposed National Standard 1 guidelines.

Response: All of the TAL options evaluated by the Monitoring Committee, including the 15.77-million-lb (7,153-mt) TAL implemented by this final rule, were derived using the most recent stock assessment update provided by the SDWG. The SDWG utilized the modeling approaches and methods recommended for continued use by the NMFS Office of Science and Technology in its 2006 peer review of the summer flounder biological reference points. The data utilized in the 2007 SDWG update are the most recent, best available, fishery-independent, recreational, and commercial fishery-dependent information and, as such, are consistent with National Standard 2 and constitute the best available scientific information. The selection of a TAL from among those options developed by the Monitoring Committee represents a policy choice for the Council and NMFS. NMFS and the Council recognize that TALs within the Monitoring Committee's recommended range would be more risk averse than the TAL implemented by this rule; however, NMFS is confident that the 15.77-million-lb (7,513-mt) TAL is sufficiently risk averse to ensure that all the regulatory and statutory requirements pertaining to annual TALs and rebuilding are met while somewhat mitigating the economic impacts associated with a reduction in harvest level (see responses to comments 1 through 7 for additional information).

The FMP's implementing regulations specify that the Monitoring Committee

shall recommend fishing levels that produce the maximum yield per recruit (F_{MAX}) with at least a 50-percent probability of success. There is no regulatory requirement that the Council adopt the recommendations of the Monitoring Committee, nor is the Monitoring Committee explicitly required to forward recommendations to achieve rebuilding or attain alternate F targets, other than those that would yield at least a 50-percent probability of constraining F at or below the overfishing level.

The reauthorized Magnuson-Stevens Act specifies that the Council's SSC shall provide ongoing scientific advice to the Council for, among other things, annual catch levels, ending overfishing, and achieving rebuilding targets. The Council's SSC did not review the updated 2007 assessment, nor did it make recommendations to the Council regarding the 2008 summer flounder TAL. NMFS has encouraged the Council to modify its operating procedures so that SSC review is incorporated into the annual specification setting process; however, to date this has not been done. There is no statutory requirement that NMFS only implement recommendations that have been vetted through the Council's SSC.

The Magnuson-Stevens Reauthorization Act was signed into law in January 2007. Development and implementation of guidance for several changes in the Act are in various stages of development. Guidance from the Secretary of Commerce, via NMFS, to Councils on SSC use is expected in the near-term. In the interim, the Council has developed internal guidance that relies on Monitoring Committee recommendations for specification setting, such that overfishing does not occur. The Annual Catch Limit (ACL) provisions of the Magnuson-Stevens Reauthorization Act are not required to be in place until 2010 or 2011, dependent on the status of the stock in question. The Monitoring Committee, while composed of scientists and individuals with stock assessment expertise, is not the same as the Council's SSC and, therefore, neither the Council nor NMFS is under any statutory requirement to accept its recommendations when other alternatives are available that also satisfy the regulatory and statutory requirements for annual summer flounder TALs.

NMFS has not yet published a proposed rule containing guidance for the application of National Standard 1 under the reauthorized Magnuson-Stevens Act. While the public hearing document supplied in advance of the

proposed rule was provided to form the basis of discussions with the public, final guidance has yet to be developed and may differ from the hearing document and/or proposed rule, when published in the **Federal Register**. The public will have opportunity to provide comment during the proposed rule comment period, once a proposed rule is published. The response to comment 5 contains information on the level of precaution associated with the 15.77-million-lb (7,153-mt) TAL implemented by this final rule.

As previously outlined, NMFS has a regulatory obligation to satisfy when implementing an annual summer flounder TAL (i.e., by implementing a TAL with at least a 50-percent probability that overfishing will not occur). For 2008, both the Monitoring Committee and Council's recommendations satisfy this requirement. NMFS must use the best available scientific information, consistent with National Standard 2. The TAL implemented by this final rule does so, as outlined previously in this response and in the response to comment 5. NMFS must also ensure that the TAL provides a reasonable probability for continued stock rebuilding so that the stock is rebuilt no later than January 1, 2013; but is under no legal or regulatory requirement to adopt any particular rebuilding strategy as long as it complies with the requirements of section 304(e) of the Magnuson-Stevens Act. As long as the TAL satisfies these requirements, the selection of one TAL over another is a policy choice for the Council and the agency. For 2008, NMFS agrees with the Council that a TAL of 15.77-million-lb (7,153-mt) satisfies all of these performance metrics while mitigating some of the economic impacts associated with the lower TAL options and finds no legal or regulatory impediment to prevent implementation of the Council's recommendation.

The process for setting TALs is performed annually. Each year, the performance of the previous year's TAL and F target are evaluated along with updates to the stock status and the projected TALs and F targets needed in the remaining rebuilding years (e.g., 2009–2012) to ensure the rebuilding target is met. In any given year, adjustments may be needed to the projections utilized in the previous year's assessments to ensure that the regulatory and statutory rebuilding requirements continue to be met. This was the case for 2008, in which a TAL lower than what was projected in 2007 is needed to ensure continued rebuilding. Implementation of the 15.77-

million-lb (7,153-mt) TAL for 2008 does not lock the rebuilding trajectory into an unadjustable course of action for the remainder of the rebuilding period.

While NMFS is not implementing the specific recommendations of the Monitoring Committee, the 15.77-million-lb (7,153-mt) TAL is consistent with the recommendations of the SDWG recommendation to use a TAL lower than the median projection (i.e., 50-percent probability) to minimize the possibility that overfishing will occur.

Comment 7: Some commenters advocating for a lower 2008 TAL expressed concern that the approach taken by NMFS for 2008 is for a short-term gain with long-term negative stock implications for the remainder of the rebuilding period.

Response: NMFS disagrees that the TAL implemented by this final rule would have negative stock implications for the remainder of the rebuilding period. There is no evidence that the 15.77-million-lb (7,153-mt) TAL would adversely affect the summer flounder stock. Under all the scenarios presented by the Monitoring Committee and evaluated by the Council, the stock is expected to continue to increase toward, and attain, the rebuilding target within the rebuilding period. The distinction among the alternative TALs considered has nothing to do with the potential adverse impacts to the stock, but rather on the probability of achieving a specific rebuilding trajectory. NMFS is confident that the TAL implemented by this rule will prevent overfishing and enable the stock to continue rebuilding.

Comment 8: Some commenters advocating for a higher 2008 TAL stated that the summer flounder stock is at a historic high, healthy, and does not need further quota reductions in 2008. In addition, they stated that summer flounder biomass as high as the biomass target has never been seen before, and current stock conditions are the highest in 25 years.

Response: NMFS acknowledges that the summer flounder biomass has been at high levels in recent years, peaking in 2005 at the highest level in the 40-year NEFSC trawl survey time series; however, stock size decreased from the 2005 to 2006 stock assessment and the biomass target has not yet been achieved. Additional harvest reductions are necessary in 2008 to continue stock growth toward the rebuilding target biomass level. Projections indicate that the TAL implemented by this final rule will provide for sufficient stock growth in 2008 to maintain a trajectory sufficient to attain the rebuilding target no later than January 1, 2013. Based on the accepted and frequently peer-

reviewed stock assessment model, the full potential growth of the stock has yet to be realized. None of the peer-reviewed science indicates that the rebuilding target cannot be attained within the rebuilding period or that the biomass target is incorrect.

Comment 9: Some commenters who felt the 2008 TAL was too low stated that they believe the summer flounder assessment is flawed and has not been critically peer reviewed by individuals outside of NMFS. The commenters suggested that the SSC and National Academies of Science should review the modeling methods and rebuilding target.

Response: NMFS disagrees. The statement that the summer flounder assessment has not been critically peer reviewed by persons from outside the agency is not true. The summer flounder stock assessment has been independently reviewed by scientists from outside NMFS twice in the rebuilding period: In 2002 as part of the NEFSC's Stock Assessment Review Committee (SARC) 35, and again in 2005 during SARC 41. In these reviews, a panel of independent stock assessment experts, provided by the Center for Independent Experts, critically reviewed the assessment methodology and data. While recommendations have been made to develop additional modeling approaches, these peer reviews have confirmed the current model and modeling approaches to be statistically valid for the annual stock assessment updates that provide the foundation for establishing the TAL.

The NMFS Office of Science and Technology convened an additional review of the biological reference points for the summer flounder stock to ensure that the 2007 quota for the fishery was based on the best possible scientific information available and used the best possible methodology. The review panelists were scientists with recognized stock assessment expertise who have not been involved in past summer flounder assessments: Two from the NMFS Northwest Region and one from Louisiana State University. The peer review panel recommended several adjustments in the assessment, and these were incorporated into the analysis that stemmed from the peer review and have been utilized by the SDWG in updating the assessment used to set the 2008 TAL.

NMFS agrees that the SSC should be involved in the Council's annual TAL recommendation process as a means to provide independent scientific advice on annual catch limits, consistent with the reauthorized Magnuson-Stevens Act.

A benchmark assessment, including peer review by independent stock assessment experts from the Center for Independent Experts, is scheduled to occur in 2008. The results of the benchmark assessment are expected to be made available for the 2009 specification setting process that will begin with the Council's August 2008, meeting. NMFS does not find an additional peer review by the National Academies of Science to be necessary in view of the multiple reviews conducted on the summer flounder assessment during the rebuilding period.

Comment 10: Most of the commenters favoring a higher 2008 summer flounder TAL expressed concerns about social and economic impacts, stating that continued reductions to the TAL in 2008 will have severe economic impacts to both commercial and recreational fishery participants, as well as support businesses (e.g., bait and tackle shops, waterfront hotels, and marinas), many of whom the commenters believe are likely to go out of business within the next year.

Response: NMFS acknowledges that there are economic impacts associated with reductions in the TAL from one year to the next and that continual decreases have a cumulative effect on fishery participants and associated businesses. A full discussion of the economic impacts expected to result from the 2008 TAL are contained in the EA/RIR/IRFA/specifications document prepared by the Council (see **ADDRESSES**) and summarized in the IRFA contained in the proposed rule (72 FR 64023; November 14, 2007), and is not repeated here. NMFS has a regulatory obligation to ensure that the TAL implemented has at least a 50-percent probability of not exceeding the overfishing threshold (F_{MAX}), and a statutory obligation to ensure that the summer flounder stock is rebuilt to 197 million lb (89,411 mt) no later than January 1, 2013. The 15.77-million-lb (7,153-mt) TAL implemented by this rule satisfies these requirements. The TAL implemented is less restrictive than the Monitoring Committee's recommended range for 2008, which would have had higher economic impacts. Additional discussion of the steps taken to minimize, to the extent practicable, the economic impacts on small entities (i.e., Federal permit holders) is outlined in the FRFA, contained in the Classification section of this final rule.

Although this final rule does not directly regulate fishing support industries, NMFS acknowledges that potential reductions in fishing effort and associated expenditures may have

indirect impacts on hotels, restaurants, fishing gear and bait shops, and other associated businesses. Sufficient data are not available to enumerate or characterize the impacts of the 2008 TAL on these businesses.

Comment 11: One commenter believed commercial fisheries that degrade habitat and discard summer flounder are the cause of the stalled stock rebuilding.

Response: NMFS and the Council acknowledged in Amendment 13 to the FMP that mobile bottom-tending and stationary fishing gear have the potential to impact adversely essential fish habitat (EFH). Amendment 13 included alternatives that minimize, to the extent practicable, adverse impacts on EFH. Given that the scope of the specifications, which include the summer flounder TAL, is narrow by operation of the regulations and the TAL is consistent with the regulations implementing the FMP, the effects of commercial fishing on EFH are not required to be re-evaluated by the Council, and no new alternatives to minimize impacts were presented in its analysis of the 2008 specifications.

Discard estimates from both commercial and recreational fisheries are included in the annual stock assessment update that was utilized to derive the 2008 TAL; therefore, discard effects on stock growth are incorporated into the annual projections of mortality incurred by the summer flounder stock.

Comment 12: Many of those favoring a higher 2008 summer flounder TAL made statements to the effect that the rigid rebuilding timeline imposed by the Magnuson-Stevens Act is not based on science and the rebuilding target is unrealistic. One commenter also stated that the status of the summer flounder stock is not adequately reflected by the TAL options considered for 2008.

Response: NMFS is obligated to meet its statutory mandate to rebuild the summer flounder stock no later than the extended rebuilding deadline of January 1, 2013. While the summer flounder stock has increased in size since the rebuilding period began in 2000, it is not yet rebuilt. Multiple peer reviews of the summer flounder stock assessment and biological reference points have upheld that the rebuilding target is realistic and that it can be attained within the rebuilding period (see responses to comments 6, 8, and 9 for more information). The 2008 TAL implemented by this final rule was derived utilizing the same methods and data which have been previously peer reviewed and recommended for continued use. The 15.77-million-lb (5,153 mt) TAL is a reduction from the

maximum amount permissible under the regulations to ensure continued stock rebuilding and to end overfishing. NMFS acknowledges that the summer flounder stock has been at high levels in recent years (see response to comment 8) and has improved since the beginning of the rebuilding period. However, overfishing in the summer flounder fishery continued through 2006, the stock is overfished, and it has yet to reach its maximum potential.

Comment 13: One commenter commented that the proposed rule has no discussion on the existing summer flounder allocation between commercial and recreational fisheries.

Response: The annual specification process in the regulations does not permit the Council to evaluate or change the allocation between the commercial and recreational summer flounder fisheries. The Council has identified the commercial/recreational allocation as a topic for further development as part of Amendment 15 to the FMP. Development of Amendment 15 is expected to continue during 2008, with tentative completion scheduled for late 2010/early 2011.

Comment 14: One commenter stated that the Secretary of Commerce has an obligation to ensure that regulations implementing the rebuilding plan for summer flounder allocate the restrictions equitably and fairly and that there is no reference to this in the proposed rule for the public to evaluate if such issues are being addressed by the rulemaking.

Response: The Magnuson-Stevens Act section 303(a)(14) criteria referenced by the commenter are not required to be addressed in the annual specification setting. The section in question is in reference to FMP requirements and, as such, the criteria therein were addressed in Amendment 12 to the FMP, which established the summer flounder rebuilding program.

Comment 15: One commenter opposed the scup TAL, indicating that scup values from the spring survey index are not compelling for recommending a reduced quota and that the discard estimates were overestimated.

Response: The spring SSB 3-year average index value remains the best available information for assessing the status of the scup stock. The reduction in quota is not only the result of a reduced 2007 spring survey value, which reduced the 3-year average value, but is the result of implementing the scup stock rebuilding program contained in Amendment 14 to the FMP. The rebuilding plan requires a constant F of 0.10 for the years 2008–

2012. The discard estimates were generated using the NEFSC observer program and dealer data and the geometric mean discards-to-landings ratio. Recreational discards were estimated using the Marine Recreational Fisheries Statistical Survey (MRFSS). While both are produced annually and have not for this year been externally peer reviewed, the estimates were reviewed by the Scup Monitoring Committee and constitute the best scientific information available.

Comment 16: One commenter opposed the black sea bass TAL for 2008, stating that the 3-year average survey index is not appropriate for determining exploitable biomass.

Response: The most recent full stock assessment for black sea bass was completed in 2006 as part of the NEFSC SARC 43. The SARC rejected the results of this assessment for management use. Therefore, the previous assessment remains the best available scientific information and utilizes the 3-year moving average of the NEFSC spring survey catch-per-tow as a means to define exploitable biomass. NMFS continues to support the development of additional assessment methods for black sea bass; however, until such time that new methods are developed and accepted through peer review, the 3-year average NEFSC spring survey catch-per-tow remains the best available scientific information.

Comment 17: One comment was received in support of the 2008 conditionally approved RSA amounts.

Response: NMFS implements the proposed RSA amounts through this final rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this rule. This action establishes specifications (i.e., annual quotas) for the summer flounder, scup, and black sea bass fisheries and possession limits for the commercial scup fishery.

Preparation of the proposed rule was dependent on the submission of the EA/RIR/IRFA in support of the specifications, which was developed by the Council. This document was received by NMFS late in September 2007. This documentation in support of the Council's recommended

specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. NMFS published the proposed rule as expeditiously as possible following a review of the Council's proposed specifications for compliance with the Magnuson-Stevens Act, the FMP and its implementing regulations, and other applicable law. The proposed rule was published on November 14, 2007, with a 21-day comment period ending December 3, 2007. Publication of the adjusted summer flounder quota by the start of the fishing year that begins January 1, 2008, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*.

If implementation of the specifications is delayed until beyond January 1, 2008, NMFS will be prevented from carrying out its legal obligation to prevent overfishing of these three species and will be in violation of a Federal court order. If a 30-day delay in effectiveness were to be required, the lack of effective quota specifications would prevent NMFS from closing the fishery should landings exceed the quotas. The summer flounder, scup, and black sea bass fisheries are all expected to be active at the start of the fishing season in 2008. In addition, the Delaware summer flounder fishery would be open for fishing, but in a negative quota situation. All of these factors could result in large overages that would have distributional effects on other quota periods and could disadvantage some gear sectors.

This final rule has been determined to be not significant for purposes of Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Several of the comment letters received on the proposed rule specifically addressed the potential economic impact of reduction of the summer flounder TAL on the recreational fishing industry, particularly in NJ. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, and the responses thereto, refer to the "Comments and Responses" section of this preamble.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal commercial or charter/party permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the 2008 quotas could affect 2,253 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2006, the most recent year for which complete permit data exists. The specific breakdown of permits, by species and type, are as follows: Commercial—summer flounder, 1,021 permits; scup, 884 permits; black sea bass, 928 permits and recreational charter/party—summer flounder 872; scup, 759; black sea bass, 832. Some individuals hold combinations of commercial and charter/party permits for one or more of the three species. The more immediate impact of this final rule will likely be felt by the 903 vessels that actively participated (i.e., landed these species) in these fisheries in 2006.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of reduced quota specifications, that reduce the number of fish that may be taken by participants of both commercial and recreational fisheries, may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trap limits that may increase efficiency or value of the fishery. For 2008, no such adjustments were recommended by the Council; therefore, this final rule contains no such measures. Therefore, the economic impact analysis of the action is evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met.

The economic analysis for the 2008 specification assessed the impacts for three alternatives. The no action alternative wherein no quotas are established for 2008, designated as Alternative 4, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative in 2008 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to specify and implement a TAL (and TAC for scup) for these fisheries on an annual basis. The no action alternative would result in no TAL (and no scup TAC) for 2008 and would likely result in overfishing of the resources.

Alternative 3 (status quo) would maintain the specifications in place for these fisheries in 2007. As such, this is the least restrictive alternative and would produce the smallest impact on small entities. Because of the difference in RSA between 2007 and 2008, implementation of this alternative would result in minor increases in the quotas for all three species. However, implementation of Alternative 3 would likely result in the biological targets (i.e., fishing mortality and exploitation rates) specified in the FMP being

exceeded and would jeopardize the rebuilding plans for these overfished species. Alternative 3 is, therefore, inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act.

Alternative 2 is the most restrictive set of specifications for 2008. It includes the Monitoring Committee's recommended summer flounder TAL of 11.64 million lb (5,280 mt), a 5.02-million-lb TAL (2,277-mt) for scup, and a 3.75-million-lb (1,710-mt) TAL for black sea bass. The measures contained in Alternative 2 would meet all the objectives of the FMP and satisfy the requirements of the Magnuson-Stevens Act. Alternative 2 would also have the highest economic impact on small entities. This alternative was not selected for implementation as the measures contained therein were overly restrictive relative to the FMP and Magnuson-Stevens Act requirements for the three species.

This final rule implements Alternative 1, the Council's preferred alternative, which consists of the quota alternatives with an intermediate level economic impacts to small entities when compared to Alternatives 2 and 3. Relative to 2007, the 2008 commercial quotas and recreational harvest measures in this action would result in the following TAL decreases for the commercial and recreational sectors:

- 7.8 percent for summer flounder
- 38.8 percent for scup
- 15.6 percent for black sea bass

Alternative 1 was selected because it satisfies NMFS's obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The Alternative 1 TAL for summer flounder is sufficiently risk-averse, providing a high probability that the rebuilding F rate and an even higher probability that the overfishing threshold (FMAX) will not be exceeded in 2008. The rebuilding F,

TAL, and the associated probabilities for success were all derived using the best available, peer-reviewed scientific methods and modeling approaches. Alternative 1 provides for a higher summer flounder TAL than the most restrictive TAL and has the highest economic impact contained in Alternative 2. As such, Alternative 1 minimizes to the extent practicable, given the regulatory and statutory requirements, the economic impacts on small entities that participate in the summer flounder fishery. Similarly, the Alternative 1 measures for scup satisfy the requirements of the recently implemented rebuilding plan for that stock. The black sea bass quota in Alternative 1 was selected as a risk-averse measure that will adequately constrain harvest in 2008 and provide continued rebuilding of the overfished stock. Table 5 presents the 2008 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under these three quota alternatives.

TABLE 5.—COMPARISON OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED IN MILLION LB AND METRIC TONS.

	Initial TAL	RSA	2007 Commercial quota overage	Preliminary adjusted commercial quota	Preliminary recreational harvest limit
Quota Alternative 1 (Preferred):					
Summer Flounder	15.77 (11,793)	0.233 (106)	0.09 (41)	9.2 (4,187)	10.26 (4,653)
Scup	7.34 (7,380)	0.214 (97)	0.62 (283)	4.62 (2,095)	1.83 (830)
Black Sea Bass	4.22 (3,629)	0.086 (39)	0.00	2.03 (920)	2.11 (957)
Quota Alternative 2 (Most Restrictive):					
Summer Flounder	11.64 (10,700)	0.233 (106)	0.09 (41)	6.75 (3,061)	4.56 (2,068)
Scup	5.02 (4,885)	0.151 (97)	0.62 (283)	2.92 (1,324)	1.33 (603)
Black Sea Bass	3.75 (3,402)	0.086 (39)	0.00	1.80 (817)	1.87 (848)
Quota Alternative 3 (Status Quo-Least Restrictive):					
Summer Flounder	17.112 (13,744)	0.233 (106)	0.09 (41)	10.03 (4,540)	6.75 (3,061)
Scup	12.00 (7,484)	0.214 (97)	0.62 (283)	8.32 (3,773)	4.2 (1,905)
Black Sea Bass	5.00 (3,719)	0.086 (39)	0.00	2.41 (1,782)	2.51 (1,856)

The revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program would be sold, and the profits would be used to offset the costs of research. As such, total gross revenues to the industry will not decrease substantially, if at all, as a result of this final rule authorizing RSA for 2008.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is

required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following Web site: <http://www.nero.noaa.gov>.

Dated: December 21, 2007.

Samuel D. Rauch III,

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

[FR Doc. 07-6252 Filed 12-26-07; 1:10 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.050613158-5262-03]

RIN 0648-AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin that Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency
action; extension of effective period;
request for comments.

SUMMARY: This action extends a temporary final rule initially published on October 18, 2005. The regulations contained in the temporary rule, emergency action, published on October 18, 2005, and subsequently extended several times at the request of the U.S. Food and Drug Administration (FDA), will expire on January 1, 2008. This temporary rule extends a closure of Federal waters through December 31, 2008. The FDA has determined that current oceanographic conditions and alga sampling data suggest that the northern section of the Temporary Paralytic Shellfish Poison (PSP) Closure Area remain closed to the harvest of bivalve molluscan shellfish and that the southern area remain closed to the harvest of whole or roe-on scallops. NMFS is publishing the regulatory text associated with this closure in this temporary emergency rule in order to ensure that current regulations accurately reflect the codified text that has been modified and extended numerous times, so that the public is aware of the regulations being extended through December 31, 2008.

DATES: The amendments to § 648.14 are effective from January 1, 2008, through December 31, 2008. The expiration date of the temporary emergency action published on July 27, 2007 (72 FR

35200), is extended through December 31, 2008. Comments must be received by January 30, 2008.

ADDRESSES: Copies of the Small Entity Compliance Guide, the emergency rule, the Environmental Assessment, and the Regulatory Impact Review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. These documents are also available via the internet at <http://www.nero.noaa.gov/nero/hotnews/redtide/index.html>.

You may submit comments, identified by RIN 0648-AT48, by any one of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments on PSP Closure."

- Fax: (978) 281-9135.

- Electronic Submissions: Submit all electronic public comments via the Federal Rulemaking Portal <http://www.regulations.gov>.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220, fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

This emergency closure is being implemented at the request of the FDA after samples of shellfish from the inshore and offshore waters off of the coasts of New Hampshire and Massachusetts tested positive for the toxins (saxotoxins) that cause PSP. These toxins are produced by the alga *Alexandrium fundyense*, which can form blooms commonly referred to as red tides. Current oceanographic conditions and alga sampling data suggest that the northern section of the

Temporary PSP Closure Area remain closed to the harvest of bivalve molluscan shellfish and that the southern area remain closed to the harvest of whole or roe-on scallops. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 10, 2005, the FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA, i.e., the Temporary PSP Closure Area, through September 30, 2005. On July 7, 2005 (70 FR 39192), the emergency rule was modified to facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories through the issuance of a Letter of Authorization (LOA) from the NMFS Regional Administrator. On September 9, 2005 (70 FR 53580), the emergency regulation was once again modified by the division of the Temporary PSP Closure Area into northern and southern components. The northern area remained closed to the harvest of all bivalve molluscan shellfish, while the southern component was reopened to the harvest of Atlantic surfclams and ocean quahogs, but remained closed to the harvest of whole or roe-on scallops. The rule was extended as published on September 9, 2005, on October 3, 2005 (70 FR 57517); reinstated on October 18, 2005, (70 FR 60450) to correct a technical error; extended on December 28, 2005 (70 FR 76713); and subsequently on June 30, 2006 (71 FR 37505); January 4, 2007 (72 FR 291); and again on June 27, 2007 (72 FR 35200), through December 31, 2007. On May 18, 2007, the FDA indicated that it could not support the re-opening of the Temporary PSP Closure Area due to insufficient analytical data from the area, and recommended the area remain closed indefinitely. The boundaries of the northern component of the Temporary PSP Closure Area comprise Federal waters bound by the following coordinates in the order stated: (1) 43°00' N. lat., 71°00' W. long.; (2) 43° 00' N. lat., 69° 00' W. long.; (3) 41°39' N. lat., 69° 00' W. long.; (4) 41° 39' N. lat., 71° 00' W. long., and then ending at the first point. Under this emergency rule, this area remains closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops. The

boundaries of the southern component of the Temporary PSP Closure Area comprise Federal waters bound by the following coordinates in the order stated: (1) 41° 39' N. lat., 71° 00' W. long.; (2) 41° 39' N. lat., 69° 00' W. long.; (3) 40° 00' N. lat., 69° 00' W. long.; (4) 40° 00' N. lat., 71° 00' W. long., and then ending at the first point. Under this emergency rule, this southern component of the area remains closed only to the harvest of whole or roe-on scallops.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c). Pursuant to section 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to a public health emergency, and public comment has been solicited concurrently with each of the extensions of this actions, as detailed and responded to below. In addition, under section 553(d)(3) there is good cause to waive the 30-day delay in effectiveness due to a public health emergency. Consultation with the FDA concerning the extension of this action beyond the January 1, 2008, expiration date continued through December 2007, making it impossible to first publish this action as a proposed rule and provide for a 30-day delay of effectiveness. The original emergency closure was in response to a public health emergency. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public

health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. One comment was received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. The commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center (http://www.cop.noaa.gov/news/fs/ne_hab_200605.html), which can be accessed directly or through the website listed in the ADDRESSES section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA has determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further to ensure the safety of human health.

This emergency/interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The rule, as last published on October 18, 2005, was determined to be not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 2007.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 648 continues to read 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 § 648.14, paragraphs (a)(170) and (a)(171) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(170) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 43° 00' N. lat., 71° 00' W. long.;

(ii) 43° 00' N. lat., 69° 00' W. long.;

(iii) 41° 39' N. lat., 69° 00' W. long.;

(iv) 41° 39' N. lat., 71° 00' W. long.;

and then ending at the first point.

(171) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops except for sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 41° 39' N. lat., 71° 00' W. long.;

(ii) 41° 39' N. lat., 69° 00' W. long.;

(iii) 40° 00' N. lat., 6° 00' W. long.;

(iv) 40° 00' N. lat., 71° 00' W. long.;

and then ending at the first point.

* * * * *

[FR Doc. E7-25255 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 72, No. 249

Monday, December 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AI24

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the Holtec International HI-STORM 100 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1014. Amendment No. 5 would include deletion of the requirement to perform thermal validation tests on thermal systems; an increase in the design basis maximum decay heat loads, namely, to 34 kilowatts (kW) for uniform loading and 36.9 kW for regionalized loading, and introduction of a new decay heat regionalized scheme; an increase in the maximum fuel assembly weight for boiling water reactor fuel in the Multi-Purpose Canister (MPC)-68 from 700 to 730 pounds; an increase in the maximum fuel assembly weight of up to 1,720 pounds for assemblies not requiring spacers, otherwise 1,680 pounds; changes to the assembly characteristics of 16x16 pressurized water reactor fuel assemblies to be qualified for storage in the HI-STORM 100 cask system; a change in the fuel storage locations in the MPC-32 for fuel with axial power shaping rod assemblies and in the fuel storage locations in the MPC-24, MPC-24E, and the MPC-32 for fuel with control rod assemblies, rod cluster control assemblies, and control element assemblies; elimination of the restriction that fuel debris can only be loaded into the MPC-24EF, MPC-32F, MPC-68F, and MPC-68FF canisters;

introduction of a requirement that all MPC confinement boundary components and any MPC components exposed to spent fuel pool water or the ambient environment be made of stainless steel or, for MPC internals, neutron absorber or aluminum; the addition of a threshold heat load below which operation of the Supplemental Cooling System would not be required and modification of the design criteria to simplify the system; minor editorial changes to include clarification of the description of anchored casks, correction of typographical/editorial errors, clarification of the definitions of loading operations, storage operations, transport operations, unloading operations, cask loading facility, and transfer cask in various locations throughout the CoC and Final Safety Analysis Report; and modification of the definition of non-fuel hardware to include the individual parts of the items defined as non-fuel hardware.

DATES: Comments on the proposed rule must be received on or before January 30, 2008.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AI24) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Personal information, such as your name, address, telephone number, 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. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415-1966].

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers

at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document 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 PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. An electronic copy of the proposed CoC No. 1014, the proposed Technical Specifications (TS), and the preliminary safety evaluation report (SER) for Amendment No. 5 can be found in a package under ADAMS Accession No. ML072540157.

The proposed CoC No. 1014, the proposed TS, the preliminary SER for Amendment No. 5, and the environmental assessment, are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail jmm2@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail jmm2@nrc.gov.

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

Procedural Background

This rule is limited to the changes contained in Amendment No. 5 to CoC No. 1014 and does not include other aspects of the HI-STORM 100 design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule

concurrently as a direct final rule in the Rules and Regulations section of this **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on March 17, 2008. However, if the NRC receives significant adverse comments on the direct final rule by January 30, 2008, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

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 NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242; as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 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). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: March 17, 2008.

SAR Submitted by: Holtec International.
SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System.

Docket Number: 72-1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI-STORM 100.

* * * * *

Dated at Rockville, Maryland, this 11th day of December, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7-25414 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0373; Directorate Identifier 2006-SW-14-AD]

RIN 2120-AA64

Airworthiness Directives; Erickson Air-Crane Incorporated Model S-64E and S-64F Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Erickson Air-Crane Incorporated (Erickson) model helicopters. The AD would require determining whether each specified tail rotor blade assembly (blade assembly) has an affected serial number or part marking. If a blade assembly has a certain serial number or part marking, the AD would also require initially and repetitively inspecting the tail rotor blade for a crack in the strap and pocket areas. If a crack is found, this AD would also require, before further flight, replacing the blade assembly with an airworthy blade assembly that does not have an affected serial number or part marking. This proposal is prompted by several reports of cracking in the strap and pocket areas of the tail rotor blade. The actions specified by the proposed AD are intended to prevent failure of the tail rotor blade and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before February 29, 2008.

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

• *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Fax*: 202-493-2251.

• *Mail*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Erickson Air-Crane Incorporated, P. O. Box 3247, Central Point, OR 97502, telephone 541-664-5544, fax 541-664-2312, or at <http://www.ericksonaircrane.com>.

You may examine the comments to this proposed AD in the AD docket on the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193-0170, telephone (817) 222-5447, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA-2007-0373, Directorate Identifier 2006-SW-14-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located in Room W12-140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the specified Erickson model helicopters. The AD would require determining whether certain tail rotor blade assemblies have an affected serial number or part marking. If a blade assembly has a certain serial number or part marking, the AD would also require initially and repetitively inspecting the tail rotor blade for a crack in the strap and pocket areas. If a crack is found, this AD would also require, before further flight, replacing the blade assembly with an airworthy blade assembly that does not have an affected serial number or part marking. This proposal is prompted by several reports of cracking in the strap or pocket areas of the tail rotor blade. This condition, if not corrected, could result in failure of the tail rotor blade and subsequent loss of control of the helicopter.

We have reviewed Erickson Alert Service Bulletin 64B15-9, Revision B, dated October 6, 2006 (ASB), which describes procedures for determining and inspecting certain marked or serial numbered tail rotor blades. The ASB specifies repetitive inspections not to exceed 6 flight hours for the S-64F model and not to exceed 15 flight hours for the S-64E model. Alternate inspection schedules are also included for "ferry flights" used for delivering the helicopter from one area of operation to another. The "ferry flight" time would be the flight time beginning at the end of the last operation in one area to the beginning of the first operation in another area. If a crack is found in the strap or pocket, the ASB specifies removing and replacing the blade.

We propose to depart from the language of the ASB and propose to use the terms hours time-in-service (TIS) instead of maximum ground-air-ground (GAG) cycles. We propose to define a "ferry flight" as a helicopter flight used for delivering the helicopter from one area of operation to another. During the "ferry flight" the helicopter would not drop off an external load or pick up an

external load. A GAG cycle as defined in the ASB for the purposes of these inspections is any maneuver that results in a climb-out similar to one following takeoff. The proposed inspection intervals for the ferry flights were also modified to accommodate a new range of values based on specifications supplied by Erickson. The proposed inspection intervals were determined by multiplying the maximum GAG cycles in the ASB for the given takeoff weight by the flight endurance of 2.5 hours TIS for the Model S-64E and 2.2 hours TIS for the Model S-64F helicopters and rounding the result to a near whole number as deemed appropriate.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, the proposed AD would require for each blade assembly, part number (P/N) 65161-00001-042 or -043, the following actions:

- Within 25 hours TIS, unless done previously, determine if the blade assembly has a serial number listed in the ASB. Also, determine if the blade assembly is marked with an "RS503" near the part number.

- If the blade assembly serial number is not listed in the ASB and does not have "RS503" marked near the part number, no further action would be required by this AD.

- If a blade assembly has either an affected serial number or part marking, before further flight, using a 10-power or higher magnifying glass, inspect both sides of the blade assembly for a crack in the strap and pocket areas paying particular attention to the circled area as depicted in Figure 1 of the ASB.

- If no crack is found, inspect the blade assembly at intervals not to exceed those TIS intervals specified in Table 1 of the AD.

- If a crack is found, before further flight, replace the unairworthy blade assembly with an airworthy FAA approved blade assembly that does not have a serial number listed in the ASB and does not have "RS503" marked near the part number.

The actions would be required to be done by following the specified portions of the ASB described previously.

We estimate that this proposed AD would:

- Affect 20 helicopters of U.S. registry; 13 Model S-64E and 7 Model S-64F;

- Require about 1 work hour to determine whether an affected blade is installed;

- Require about 1 work hour to inspect the blade assembly, assuming about 40 inspections a year for each Model S-64E (total 520) and about 100

inspections a year for each Model S-64F (total 700);

- Require about 4 work hours to replace each tail rotor blade, assuming 10 tail rotor blade assemblies are replaced;
- Cost about \$80 per work hour; and
- Cost about \$60,000 per blade assembly.

Based on these figures, the estimated total cost impact of the proposed AD on U.S. operators would be \$702,400, based on the stated assumptions.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Erickson Air-Crane Incorporated: Docket No. FAA-2007-0373; Directorate Identifier 2006-SW-14-AD.

Applicability

Model S-64E and S-64F helicopters, with tail rotor blade assembly (blade assembly), part number (P/N) 65161-00001-042 or -043, installed, certificated in any category.

Compliance

Required as indicated.

To prevent failure of the tail rotor blade and subsequent loss of control of the helicopter, do the following:

(a) Within 25 hours time-in-service (TIS), unless accomplished previously:

(1) Determine if the blade assembly has a serial number listed in the Accomplishment Instructions, paragraph 2.A., of Erickson Air-Crane Incorporated Alert Service Bulletin No. 64B15-9, Revision B, dated October 6, 2006 (ASB). Also, determine if the blade assembly has "RS503" marked near the P/N.

(2) If the blade assembly serial number is not listed in the ASB and does not have "RS503" marked near the P/N, no further action is required by this AD.

(3) If a blade assembly has either a serial number listed in paragraph 2.A of the ASB or has "RS503" marked near the part number, before further flight, using a 10-power or higher magnifying glass, inspect both sides of the blade assembly for a crack in the strap and pocket areas paying particular attention to the circled area as depicted in Figure 1 of the ASB.

(i) If no crack is found, inspect the blade assembly as specified in paragraph (a)(3) of this AD at intervals not to exceed those shown in the following table:

TABLE 1

Mission type	Gross takeoff weight (lbs)	Maximum time between inspections (hours TIS)
Model S-64E Tail Rotor Blade Strap Inspection Intervals		
Ferry Only	Above 35,000	30
Ferry Only	Above 30,000 and less than or equal to 35,000	35
Ferry Only	Below or equal to 30,000	40
All Others	All	15
Model S-64F Tail Rotor Blade Strap Inspection Intervals		
Ferry Only	Above 35,000	8
Ferry Only	Above 30,000 and less than or equal to 35,000	15
Ferry Only	Below or equal to 30,000	17
All Others	All	6

Note: For the purposes of this AD, a ferry flight is defined as a helicopter flight used for delivering the helicopter from one area of operation to another. During the ferry flight,

the helicopter would not drop off an external load or pick up an external load.

(ii) If a crack is found, before further flight, replace the unairworthy blade assembly with an airworthy FAA approved blade assembly

that does not have a serial number listed in paragraph 2.A of the ASB and does not have "RS503" marked near the P/N.

(b) Installing an airworthy blade assembly that does not have a serial number listed in paragraph 2.A of the ASB and does not have "RS503" marked near the P/N is terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Directorate, Rotorcraft Certification Office, FAA, ATTN: Michael Kohner, Aviation Safety Engineer, Fort Worth, Texas 76193-0170, telephone (817) 222-5447, fax (817) 222-5783.

Issued in Fort Worth, Texas, on November 28, 2007.

Mark R. Schilling,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. E7-25411 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

RIN 3038-AC51

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: The Commodity Futures Trading Commission is reopening the period for public comment to provide interested persons additional time to comment on certain proposed amendments pertaining to the Federal speculative position limits for agricultural commodities.

DATES: Comments must be received by January 21, 2008.

ADDRESS: Comments should be submitted to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile to 202.418.5521, or by e-mail to secretary@cftc.gov. Reference should be made to the "Proposed Revision of Federal Speculative Position Limits." Comments may also be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Don Heitman, Attorney, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418-5041, facsimile number (202) 418-5507, electronic mail dheitman@cftc.gov; or Martin Murray, Economist, Division of Market Oversight, telephone (202) 418-

5276, facsimile number (202) 418-5507, electronic mail mmurray@cftc.gov.

SUPPLEMENTARY INFORMATION: The Commission is reopening the period for public comment on proposed amendments to regulation 150.2.¹ The amendments were proposed on November 21, 2007 and the comment period initially closed on December 21, 2007.² The amendments, if adopted by the Commission, would increase the Federal speculative position limits enumerated in regulation 150.2 for all single-month and all-months-combined positions in all commodities except oats, pursuant to parameters specified in Commission regulation 150.5(c). The amendments would also aggregate positions in all designated contract market products that share substantially identical terms with the contracts enumerated in regulation 150.2 for the purposes of ascertaining compliance with the Federal speculative position limits.

By letter dated December 7, 2007, the National Grain and Feed Association, an association representing companies that utilize exchange traded agricultural contracts to manage price and inventory risks,³ and by letter dated December 14, 2007, the American Bakers Association, an association representing the interests of the wholesale baking industry,⁴ requested an extension of the comment period to better develop a response to Commission's proposed amendments. While the Commission has received commentary on the proposed amendments,⁵ it believes that it would be appropriate to reopen the comment period to ensure that an adequate opportunity is provided for the submission of additional meaningful and substantive comments. Accordingly, the Commission has determined to reopen the comment period for the proposed amendments to regulation 150.2 to January 21, 2008. The Commission notes that it will give full consideration to any comment received in the interval between the closing and reopening of the comment period for the proposed amendments.

¹ 17 CFR 150.2.

² 72 FR 65783 (November 21, 2007).

³ Letter from Rod Clark, Chair, Risk Management Committee, National Grain and Feed Association, to David A. Stawick, Secretary of the Commission (December 7, 2007) (on file with the Commission).

⁴ Letter from Lee Sanders, Senior Vice President, Government Relations & Public Affairs, Corporate Secretary, American Bakers Association, to David A. Stawick, Secretary of the Commission (December 14, 2007) (on file with the Commission).

⁵ Comment File: 07-014, available at <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2007/07-014.html>.

Issued in Washington, DC, on December 21, 2007 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7-25344 Filed 12-28-07; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-147290-05]

RIN 1545-BF08

Nuclear Decommissioning Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 468A of the Internal Revenue Code relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants. The temporary regulations reflect changes to the law made by the Energy Policy Act of 2005, and affect most taxpayers that own an interest in a nuclear power plant. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 31, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-147290-05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-147290-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-147290-05).

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Patrick S. Kirwan, (202) 622-3110; concerning submissions and to request a hearing, Kelly Banks, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed

rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). OMB has approved, on a temporary basis, the information collections contained in the cross-referenced temporary rule under control number 1545-2091. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §§ 1.468A-3T(h), 1.468A-4T, 1.468A-7T, and 1.468A-8T(d). The information collected under § 1.468A-3T(h) is required to evaluate whether the taxpayer has properly determined the schedule of ruling amounts. The information collected under § 1.468A-7T pertains to the initial election to maintain a qualified nuclear decommissioning trust fund. The information collected under § 1.468A-8T(d) is required to evaluate whether the taxpayer has properly determined the schedule of deduction amounts. The collection of information is mandatory. The likely recordkeepers are owners of nuclear power plants.

Estimated total annual recordkeeping burden: 2,500 hours.

The estimated annual burden per recordkeeper varies depending on individual circumstances, with an estimated average of 25 hours.

Estimated number of recordkeepers: 100.

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

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

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to 26 CFR part 1 providing regulations under section 468A of the Internal Revenue Code of 1986 (Code). Section 468A was amended by section 1310 of the Energy Policy Act of 2005, Public Law 109-58 (119 Stat. 594).

Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 468A of the Internal Revenue Code of 1986 (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required. We request comment on the accuracy of this certification. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department generally request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.468A-5 also issued under 26 U.S.C. 468A(e)(5). * * *

Par. 2. Sections 1.468A-0 through 1.468A-9 are added to read as follows:

§ 1.468A-0 Table of contents.

[The text of this proposed section is the same as the text of § 1.468A-0T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-1 Nuclear decommissioning costs; general rules.

[The text of this proposed section is the same as the text of § 1.468A-1T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-2 Treatment of electing taxpayer.

[The text of this proposed section is the same as the text of § 1.468A-2T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-3 Ruling amount.

[The text of this proposed section is the same as the text of § 1.468A-3T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-4 Treatment of nuclear decommissioning fund.

[The text of this proposed section is the same as the text of § 1.468A-4T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-5 Nuclear decommissioning fund—miscellaneous provisions.

[The text of this proposed section is the same as the text of § 1.468A-5T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-6 Disposition of an interest in a nuclear power plant.

[The text of this proposed section is the same as the text of § 1.468A-6T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-7 Manner of and time for making election.

[The text of this proposed section is the same as the text of § 1.468A-7T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-8 Special transfers to qualified funds pursuant to section 468A(f).

[The text of this proposed section is the same as the text of § 1.468A-8T published elsewhere in this issue of the **Federal Register**.]

§ 1.468A-9 Effective/applicability date and transitional rules.

[The text of this proposed section is the same as the text of § 1.468A-9T(a) and (b) published elsewhere in this issue of the **Federal Register**.]

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7-25222 Filed 12-28-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-139236-07]

RIN 1545-BH07

Measurement of Assets and Liabilities for Pension Funding Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on the determination of plan assets and benefit liabilities for purposes of the funding requirements that apply to single employer defined benefit plans. These regulations affect sponsors, administrators, participants, and beneficiaries of single employer defined benefit plans.

DATES: Written or electronic comments and requests for a public hearing must be received by March 31, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139236-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-139236-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-139236-07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622-6090; concerning submissions and requests for a public hearing, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov or at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.430(h)(2)-1(e). This information is required in order for a plan sponsor to make an election to use an alternative interest rate for purposes of determining a plan's funding obligations under § 1.430(h)(2)-1. This information is required to obtain or retain benefits. The likely respondents are qualified retirement plan sponsors.

Estimated total annual reporting burden: 54,000 hours.

Estimated average annual burden hours per respondent: 0.75 hours.

Estimated number of respondents: 72,000.

Estimated annual frequency of responses: Occasional.

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

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

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 430(d), 430(g), 430(h)(2), and 430(i), as added to the Internal Revenue Code (Code) by the Pension Protection Act of 2006 (PPA '06), Public Law 109-280 (120 Stat. 780).

Section 412 provides minimum funding requirements that generally apply for pension plans (including both defined benefit pension plans and money purchase pension plans). PPA '06 makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA '06, specifies the minimum funding requirements that apply to single employer defined benefit pension plans (including multiple

employer plans) pursuant to section 412.¹

Section 430(a) defines the minimum required contribution for a single employer plan as the sum of the plan's target normal cost and the shortfall and waiver amortization charges for the plan year. Under section 430(b), a plan's target normal cost for a plan year is the present value of all benefits expected to accrue or be earned under the plan during the plan year. For this purpose, section 430(b) provides that an increase in any benefit attributable to services performed in a preceding plan year by reason of a compensation increase during the current plan year is treated as having accrued during the current plan year.

One of the amortization charges used in determining the minimum required contribution, the shortfall amortization charge, is determined based on the difference between the plan's funding target and the value of plan assets. Under section 430(d), except as provided in section 430(i)(1) (regarding plans in at-risk status), a plan's "funding target" for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

Section 430(g)(1) provides that all determinations made with respect to minimum required contributions for a plan year (such as the value of plan assets and liabilities) must be made as of the plan's valuation date. Section 430(g)(2) provides that, other than for plans with 100 or fewer participants (determined as provided in section 430(g)(2)(B) and (C)), the valuation date for a plan year must be the first day of the plan year. Under section 430(g)(3), the value of plan assets is generally the fair market value of those assets. However, the value of plan assets may be determined on the basis of the averaging of fair market values, but only if the averaging method is permitted under regulations and satisfies certain other requirements.

Under section 430(g)(4), if a required contribution for a preceding plan year is made after the valuation date for the current plan year, the contribution is

taken into account in determining the value of plan assets for the current plan year. For 2009 and future plan years, only the present value (determined as of the valuation date for the current plan year, using the plan's effective interest rate for the preceding plan year) of the contributions made for the preceding plan year is taken into account. If any contributions for the current plan year are made before the valuation date (which could only occur for a small plan with a valuation date that is not the first day of the plan year), plan assets as of the valuation date must exclude (1) those contributions, and (2) interest on those contributions (determined at the plan's effective interest rate for the plan year) for the period between the date of the contribution and the valuation date. Under section 430(h)(2)(A), a plan's effective interest rate for a plan year is defined as the single interest rate that, if used to determine the present value of the benefits taken into account in determining the plan's funding target for the plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d).

Under section 430(h)(1), the determination of any present value or other computation under section 430 is to be made on the basis of actuarial assumptions and methods each of which is reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

Section 430(h)(2) specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under the provision, present value is determined using three interest rates (segment rates), each of which applies to benefit payments expected to be paid during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year. The second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial 5-year period. The third segment rate applies to benefits reasonably determined to be payable after the end of that 15-year period.

Each segment rate is a single interest rate determined monthly by the Treasury Department on the basis of a corporate bond yield curve. The corporate bond yield curve used for this purpose is to be prescribed monthly by the Treasury Department and is to reflect the average, for the 24-month period ending with the preceding

month, of yields on investment grade corporate bonds with varying maturities that are in the top three quality levels available. Under section 430(h)(2)(F), the Secretary of the Treasury is directed to publish each month the corporate bond yield curve and each of the segment rates for the month. In addition, the Secretary is directed to publish a description of the methodology used to determine the yield curve and segment rates to enable plans to make reasonable projections regarding the yield curve and segment rates for future months, based on a plan's projection of future interest rates.

Section 430(h)(2)(G) provides a transition rule for plan years beginning in 2008 and 2009 (other than for plans where the first plan year begins on or after January 1, 2008). Under this transition rule, the interest rates to be used in the valuation are based on a blend of the segment rates and the long-term corporate bond rates used for plan years prior to the effective date of PPA '06. Under section 430(h)(2)(G)(iv), a plan sponsor may elect to have this transition rule not apply. In addition, solely for purposes of determining minimum required contributions under section 430, in lieu of using the segment rates, an employer may elect under section 430(h)(2)(D)(ii) to use interest rates on a yield curve based on the yields on investment grade corporate bonds within the top three quality levels without regard to the 24-month averaging described above.

Section 430(i) requires the application of special assumptions in determining the funding target and target normal cost of a plan in at-risk status. Under section 430(i)(4), a plan is in at-risk status for a year if, for the preceding year: (1) The plan's funding target attainment percentage, determined without regard to the at-risk assumptions, was less than 80 percent (with a transition rule discussed below), and (2) the plan's funding target attainment percentage, determined using the at-risk assumptions (without regard to whether the plan was in at-risk status for the preceding year), was less than 70 percent. Under a transition rule applicable for plan years beginning in 2008, 2009, and 2010, the following percentages apply instead of 80 percent in the first part of the test for determining at-risk status: 65 percent for 2008, 70 percent for 2009, and 75 percent for 2010. In the case of plan years beginning in 2008, the plan's funding target attainment percentage for the preceding plan year is to be determined under rules provided by the Treasury Department.

¹ Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Internal Revenue Code (Code), and section 303 of ERISA sets forth additional funding rules for single employer plans that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

Under section 430(i)(6), the at-risk rules do not apply if a plan had 500 or fewer participants on each day during the preceding plan year. For this purpose, all defined benefit pension plans (other than multiemployer plans) maintained by the same employer (or a predecessor employer), or by any member of the employer's controlled group, are treated as a single plan.

If a plan is in at-risk status, the plan's funding target and normal cost are determined (under section 430(i)(1) and (2)) using special actuarial assumptions. Under these assumptions, all employees who are not otherwise assumed to retire as of the valuation date, but who will be eligible to elect to commence benefits in the current and 10 succeeding plan years, are assumed to retire at the earliest retirement date under the plan, but not before the end of the current plan year. All employees are assumed to elect the form of retirement benefit available under the plan at that assumed retirement age that results in the highest present value.

The funding target of a plan in at-risk status for a plan year is generally the sum of: (1) The present value of all benefits accrued or earned as of the beginning of the plan year, and (2) in the case of a plan that has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor. That loading factor is equal to the sum of: (1) \$700 multiplied by the number of participants in the plan, plus (2) 4% of the funding target determined without regard to the loading factor. The target normal cost of a plan in at-risk status for a plan year is generally the sum of: (1) The present value of benefits expected to accrue or be earned under the plan during the plan year, determined using the special assumptions described above, and (2) in the case of a plan that has been in at-risk status for at least 2 of the 4 preceding plans years, a loading factor of 4% of the target normal cost determined without regard to the loading factor. If a plan has been in at-risk status for fewer than 5 consecutive plan years, a phase-in rule applies to the determination of the "funding target" and "target normal cost" under section 430(i)(5).

Explanation of Provisions

I. Overview

These proposed regulations are the third in a series of proposed regulations under new section 430.² These

proposed regulations would provide guidance on the determination of assets and liabilities for purposes of applying the new funding rules of section 430. The Treasury Department and the IRS intend to issue additional proposed regulations relating to other portions of the rules under section 430 (including sections 430(a), (c), and (j)) in the first part of 2008. It is expected that those regulations will be effective for plan years beginning on or after January 1, 2009.

II. Section 1.430(d)-1 Determination of Funding Target and Target Normal Cost

Section 1.430(d)-1 would provide rules for determining the funding target and the target normal cost of a plan that is not in at-risk status (within the meaning of section 430(i)). The proposed regulations would provide that the funding target is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year, and that the target normal cost for the plan year is the present value of all benefits that accrue or are earned (or that are expected to accrue or to be earned) under the plan during the plan year. Thus, if the actuarial valuation date for the plan year is not the first day of the plan year, the target normal cost will include the benefits actually earned during the year through the valuation date for the plan year plus a projection of benefits that will be earned through the rest of the plan year.

In order to determine the funding target and target normal cost, the future benefits to be paid from the plan must be allocated among prior plan years (in which case they will be taken into account in determining the funding target for the current year), the current plan year (in which case they will be taken into account in determining the target normal cost of the plan for the plan year), and future years. If the amount of a benefit that is expected to be paid is a function of the accrued benefit at the time the benefit is expected to be paid, then the amount taken into account in the funding target is determined by applying that function to the accrued benefit as of the beginning of the plan year and the amount of the benefit taken into account in the target normal cost is determined by applying that function to the increase in the accrued benefit for the plan year. If the amount of a benefit that is expected to be paid is not a function of the accrued benefit at the time the

benefit is expected to be paid (for example, certain ancillary benefits), but is a function of the participant's service at that time, then the amount taken into account for purposes of determining the funding target for a plan year is based on a participant's service as of the first day of the plan year and the amount of the benefit that is taken into account in the target normal cost is the increase in that benefit for the plan year based on the additional year of service. If the amount of a benefit that is expected to be paid is neither a function of the accrued benefit at the time the benefit is expected to be paid nor a function of the participant's service at that time, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is based on the proportion of a participant's service as of the first day of the plan year relative to the service the participant will have when the participant meets the age and service eligibility requirement for the benefit, and the portion of the benefit that is taken into account in the target normal cost is the increase in the proportional benefit for the plan year.

The proposed regulations would provide that the determination of the funding target and the target normal cost for a plan year is not permitted to take into account any limitations or anticipated limitations under section 436. Also, the proposed regulations would provide that plan administrative expenses paid (or expected to be paid) from plan assets for a plan year are not taken into account in determining a plan's target normal cost and funding target for that plan year. With respect to benefits provided by insurance, the proposed regulations would provide that, in general, a plan must reflect the liability for benefits that are funded through insurance contracts held by the plan in the plan's funding target and target normal cost, and must include the value of the corresponding insurance contracts in plan assets. However, an alternative rule is provided in the case of benefits that are funded through certain insurance contracts purchased from an insurance company licensed under the laws of a State. Under this rule, a plan is permitted to exclude benefits provided under such contracts from the plan's funding target and target normal cost and to exclude the corresponding insurance contracts from plan assets, but only to the extent that a participant's or beneficiary's right to receive those benefits is an irrevocable contractual right based on premiums paid to the insurance company prior to

² Proposed regulation §§ 1.430(h)(3)-1 and 1.430(h)(3)-2, relating to the mortality tables used to determine liabilities under section 430(h)(3), were issued May 29, 2007 (REG-143601-06, 72 FR 29456), and proposed regulation § 1.430(f)-1,

relating to prefunding and funding standard carryover balances under section 430(f), was issued August 31, 2007 (REG-113891-07, 72 FR 50544).

the valuation date under the insurance contracts.

The proposed regulations would provide that, except as provided in section 412(d)(2), the funding target and target normal cost are determined based on the plan terms that are adopted no later than the valuation date for the plan year and become effective during that plan year. Thus, the rules of Revenue Ruling 77-2 (1977-1 CB 120) would no longer apply. See § 601.601(d)(2) of this chapter. For example, if an amendment that increases plan liabilities is adopted on or before the plan's valuation date and is effective during the plan year that includes the valuation date, the full increase in liability with respect to the amendment is taken into account as of that year's valuation date. However, with respect to the pre-PPA counterpart to section 412(d)(2) (section 412(c)(8) as in effect prior to amendments made by PPA '06), Rev. Rul. 79-325 (1979-2 CB 190) provides that section 412(c)(8) applies to plan amendments made during the plan year (as well as to plan amendments made within 21/2 months after the end of the plan year), and this same rule applies under the identical statutory provisions of section 412(d)(2). See § 601.601(d)(2) of this chapter. Thus, if an amendment that increases plan liabilities is adopted after the valuation date for a plan year but the amendment is effective during that plan year, the full increase in liability will be taken into account as of the valuation date for that plan year if a section 412(d)(2) election is made, and none of the increase in liability will be taken into account as of the valuation date for that plan year if no section 412(d)(2) election is made. Regardless of whether a section 412(d)(2) election is made, the rules of section 436(c) must be applied in determining whether the amendment is permitted to take effect during the plan year. Section 430 does not contain a corresponding provision to former section 412(c)(12) under which the provisions of a collective bargaining agreement are taken into account for funding purposes before the corresponding plan amendments have been made.

The proposed regulations would require all currently employed plan participants, formerly employed plan participants (including retirees and terminated vested participants), and other individuals currently entitled to benefits under the plan to be included in the valuation. Unlike § 1.412(c)(3)-1(c)(3)(ii), the proposed regulations would not permit exclusion from the valuation of those plan participants who could have been excluded from participation in the plan under the rules

of section 410(a). However, the proposed regulations would continue to apply the rules of § 1.412(c)(3)-1(c)(3)(iii) (relating to the exclusion of terminated employees who do not have a vested benefit under the plan but whose service might be taken into account in future years upon rehire) and the rules of § 1.412(c)(3)-1(d)(2) (under which the future participation in the plan of current employees who are not yet participants is permitted to be anticipated).

Section 1.430(d)-1 of the proposed regulations would cross-reference other regulations for the details of the statutorily specified interest rates, mortality tables, and actuarial assumptions that apply to plans in at-risk status. With respect to the actuarial assumptions that are not specified by statute or regulations, the proposed regulations would require that the actuarial assumptions used to determine present value satisfy the section 430(h)(1) requirements to be individually reasonable (taking into account the experience of the plan and reasonable expectations) and, in combination, offer the plan's enrolled actuary's best estimate of anticipated experience under the plan.

The proposed regulations would provide that, once the actuarial assumptions for a plan year are established, they are not permitted to be changed for that plan year (unless the Commissioner determines that the assumptions are unreasonable). Similarly, the proposed regulations would provide that, once the funding method for a plan year is established, it is not permitted to be changed for that plan year (unless the Commissioner determines that the use of the funding method for the plan year is impermissible).

In general, the actuarial assumptions and funding method used by a plan for a plan year are required to be established not later than the due date (with extensions) for the filing of Form 5500, "Annual Return/Report of Employee Benefit Plan," for that plan year (or not later than the last day of the seventh month after the end of the plan year in the case of a plan not required to file Form 5500). The proposed regulations would provide that the filing of the first actuarial report (Schedule SB) under section 6059 for a plan year that reflects the use of actuarial assumptions and a funding method is treated as the establishment of those assumptions and the funding method for that plan year.

In accordance with section 430(h)(4), the proposed regulations would provide that the plan's actuarial valuation must

take into account the probability that future benefits will be paid in optional forms of benefit under the plan, including single sum distributions, determined on the basis of the plan's experience and other relevant assumptions. In addition, the plan's enrolled actuary must take into account any difference in the present value of those future benefit payments that results from the use of actuarial assumptions in determining benefit payments in any such optional forms of benefit that are different from those prescribed by section 430(h).

In the case of a distribution that is subject to section 417(e)(3) and that is determined using the applicable interest rate and applicable mortality table under section 417(e)(3), the proposed regulations would provide that the computation of the present value of that distribution will be treated as having taken into account any difference in present value that results from the use of actuarial assumptions that are different from those prescribed by section 430(h) only if the present value of the distribution is determined by valuing the annuity that corresponds to the distribution using special actuarial assumptions. Under these special assumptions, for the period beginning with the annuity starting date, the current applicable mortality table under section 417(e)(3) is substituted for the mortality table under section 430(h)(3) that would otherwise apply. In addition, under these special actuarial assumptions, the valuation interest rates under section 430(h)(2) are used for all periods (as opposed to the interest rates under section 417(e)(3) which the plan uses to determine the amount of the benefit).

The proposed regulations provide two elective adjustments to this methodology for valuing distributions subject to section 417(e)(3). First, in determining the present value of such a distribution, if a plan uses the generational mortality tables under § 1.430(h)(3)-1(a)(4) or under § 1.430(h)(3)-2, the plan would be permitted to use a 50-50 male-female blend of the annuitant mortality rates under the § 1.430(h)(3)-1(a)(4) generational mortality tables in lieu of the applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date. Second, a plan would be permitted to make adjustments to reflect differences between the phase-in of the section 430(h)(2) segment rates under section 430(h)(2)(G) and the adjustments to the segment rates under section 417(e)(3)(D)(iii).

In the case of a distribution that is subject to section 417(e)(3) but that is determined as the greater of the benefit determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and the benefit determined using some basis other than the section 417(e)(3) assumptions, the proposed regulations would provide that the computation of present value must take into account the extent to which the present value of the distribution is greater than the present value determined using the applicable interest rate and applicable mortality table.

In the case of an applicable defined benefit plan described in section 411(a)(13)(C) (such as a cash balance plan), the proposed regulations would provide that, if the distribution is determined under the rules of section 411(a)(13)(A), the amount of the future distribution must be determined by projecting the future interest credits or equivalent amounts under the plan's interest crediting rules to the expected date of payment using reasonable actuarial assumptions. Thus, the present value of a future distribution is not necessarily the current amount of a participant's hypothetical account balance.

The proposed regulations would provide that any reasonable technique can be used to determine the present value of the benefits expected to be paid during a plan year, based on the interest rates and mortality assumptions applicable for the plan year. For example, the present value of a monthly retirement annuity payable at the beginning of each month can be determined using the standard actuarial approximation that reflects 13/24ths of the discounted expected payments for the year as of the beginning of the year and 11/24ths of the discounted expected payments for the year as of the end of the year, or by assuming that the payment is made in the middle of the year.

The proposed regulations would also reflect the provisions of section 430(h)(5), requiring approval of the Commissioner for large changes in actuarial assumptions. In general, this rule applies where the application of the changes in actuarial assumptions results in a decrease in the plan's funding shortfall for the current plan year (disregarding the effect on the plan's funding shortfall resulting from changes in interest and mortality assumptions) that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before the change. Thus, for example, if a plan leaves at-risk status and

consequently makes changes to its actuarial assumptions (including a return to previously used assumptions) that result in a reduction in the funding shortfall that exceeds \$50,000,000, that change in actuarial assumptions would require approval of the Commissioner. In determining whether aggregate unfunded vested benefits exceed \$50,000,000, the proposed regulations would provide that multiemployer plans and plans with no unfunded vested benefits are disregarded. In addition, the proposed regulations would provide that the aggregate unfunded vested benefits used to determine premiums for the current plan year (as determined under section 4006(a)(3)(E)(iii) of ERISA) are used for purposes of calculating whether unfunded vested benefits exceed \$50,000,000.

III. Section 1.430(g)-1 Valuation Date and Value of Plan Assets

Section 1.430(g)-1 would provide rules for a plan's valuation date and the value of plan assets.³ Under the proposed regulations, except in the case of a small plan, a plan's valuation date is the first day of the plan year. For this purpose, a small plan is defined as a plan sponsored by an employer that had 100 or fewer participants in defined benefit plans (other than multiemployer plans as defined in section 414(f)) sponsored by the employer or members of the employer's controlled group, including active and inactive participants and all other individuals entitled to future benefits. A small plan is permitted to have a valuation date other than the first day of a plan year. The selection of a valuation date by a small plan is part of the plan's funding method and, thus, is permitted to be changed only with the Commissioner's consent. If a plan that was using a valuation date that was not the first day of the plan year is no longer eligible to use that date because the plan is no longer a small plan, the required change of the valuation date to the first day of the plan year is treated as automatically approved and no prior approval of the Commissioner is necessary.

The proposed regulations would provide that plan assets must be valued either at their fair market value on the valuation date or at the "average" value of assets on the valuation date. Under this average value, the value of plan assets is set equal to the average of the fair market value of assets on the valuation date and the adjusted fair

market value of assets determined for one or more earlier determination dates. The proposed regulations would provide that the period of time between the valuation date and each of the earlier determination dates must be equal (with a period that is not more than 12 months), and the earliest of these determination dates cannot be earlier than the last day of the 25th month before the valuation date of the plan year. In a typical situation, the earlier determination dates will be the two immediately preceding valuation dates. The proposed regulations would provide that this average of fair market values is increased for contributions included in the plan's asset balance on the current valuation date that were not included in the plan's asset balance on an earlier determination date, and reduced for benefits and administrative expenses paid from plan assets during the same period.⁴ After these adjustments, as well as the adjustments described in the following two paragraphs, the resulting average value must be constrained so that it falls between 90 and 110 percent of the fair market value of plan assets.

The proposed regulations would implement the rules of section 430(g)(4) relating to the treatment of contributions for a prior plan year that are made after the valuation date for the current plan year. These rules work in conjunction with the rules of section 430(j)(2) in order to keep employers and plans neutral regarding the timing of contributions that are paid after the end of the plan year. Under section 430(j)(2), the amount of the contribution must be adjusted for interest at the effective interest rate under section 430(h)(2) in order to take into account the delay in contributions (including the period after the end of the year). For this purpose, section 430(g)(4) requires that only the present value of a prior year contribution paid after the valuation date be included in plan assets, so that the value of plan assets for the next plan year is not inflated by reflecting a delayed contribution at full value. This effectively means that the present value of the contribution is the same from the perspective of the employer and the plan, regardless of when it is made. Because the requirement to adjust contributions for delayed payment after the end of the plan year is first effective

³ The value of plan assets under these proposed regulations is referred to in Schedule SB of Form 5500 as "actuarial assets."

⁴ Note that this average of fair market values is different from the calculation of average value under § 1.412(c)(2)-1(b)(7). For example, the adjusted value described in the proposed regulations does not include interest and dividends on plan assets attributable to the period between the earlier determination date and the valuation date in determining the adjusted fair market value of assets.

for plan years beginning in 2008 (except for certain plans with a delayed effective date), the corresponding requirement to include only the present value of a prior year contribution paid after the valuation date is not effective until the second plan year for which section 430 applies to the plan. Thus, this corresponding requirement will become effective in plan years beginning in 2009, except with respect to plans for which the effective date of section 430 is delayed.

The proposed regulations would specify the treatment of current year contributions that are made before the valuation date (which could only occur for small plans with valuation dates other than the first day of the plan year). These contributions, adjusted for interest at the effective interest rate under section 430(h)(2) for the plan year, must be subtracted from plan assets in determining the actuarial value of plan assets. This is similar to the pre-PPA '06 requirement to subtract these contributions from plan assets after adjustment using the plan's valuation interest rate.

The proposed regulations would incorporate the provisions of section 430(l) (involving qualified transfers to health benefit accounts under section 420).

IV. Section 1.430(h)(2)–1 Interest Rates

Section 1.430(h)(2)–1 would specify the interest rates that are to be used to determine present value and to make other calculations under section 430. These rates are generally based on the 24-month moving averages of 3 separate segment rates for the month that includes the valuation date (the applicable month). The first segment rate, which is based on the portion of the corporate bond yield curve over the period from 0 to 5 years, applies for purposes of discounting benefits that are expected to be paid during the 5-year period beginning on the valuation date for a plan year. The second segment rate, which is based on the portion of the corporate bond yield curve over the period between 5 and 20 years, applies for purposes of discounting benefit payments that are expected to be paid at least 5 years after the valuation date, but before 20 years. The third segment rate applies to benefit payments that are expected to be paid at least 20 years after the valuation date. Thus, for example, if a series of monthly payments is assumed to be made beginning on the valuation date, the second segment rate will apply to the 61st such payment and the third segment rate will apply beginning with

the 241st such payment.⁵ Except in the case of a new plan, a transition rule applies for 2008 and 2009 under which these segment rates are blended with the long-term corporate bond rate that applies under pre-PPA law.

The monthly corporate bond yield curve is, with respect to any month, a yield curve that is prescribed by the Commissioner for that month based on yields for that month on investment grade corporate bonds with varying maturities that are in the top three quality levels available. Notice 2007–81 (2007–44 IRB 899) provides guidance on the monthly corporate bond yield curve and related interest rates used to make certain computations related to the funding requirements that apply to single employer defined benefit plans under section 430(h)(2), including a description of the methodology for determining the monthly corporate bond yield curve. See § 601.601(d)(2) of this chapter.

The proposed regulations would reflect the special interest rate for determining a plan's funding target in the case of airlines that make the 10-year amortization election described in section 402(a)(2) of PPA '06, in accordance with section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28 (121 Stat. 112). The special interest rate does not apply for other purposes such as the determination of the plan's target normal cost.

The proposed regulations describe several elections a plan sponsor is permitted to make in order to use an alternative interest rate rather than the segment rates. These elections are made by providing written notification of the election to the plan's enrolled actuary. Such an election is part of the plan's funding method and, accordingly, may only be adopted or changed with the consent of the Commissioner. Under one such election, a plan sponsor that is using segment rates may elect the use of an alternative month as the applicable month, provided that the alternative month is one of the 4 months that precede the month that includes the valuation date for the plan year. Under another such election, the plan sponsor may elect not to apply the transition rule under which the segment rates are blended with the 30-year Treasury rate for 2008 and 2009. Under the third such election, for purposes of determining the minimum required contribution

under section 430 (including the determination of shortfall amortization installments, waiver amortization installments, and the present value of those installments), the plan sponsor may elect to use interest rates under the monthly corporate bond yield curve—which is a set of spot rates for the month preceding the valuation date rather than a 24-month moving average for that month or an alternative applicable month—in lieu of the segment rates. The amount of the funding target calculated in accordance with any of these elections applies for all purposes, including determining the adjusted funding target attainment percentage under section 436 and the applicable limitations under section 404. In the case of the first plan year to which section 430 applies to a plan (the first plan year beginning in 2008 other than for a plan with a delayed section 430 effective date), any of these elections are treated as having been approved by the Commissioner and do not require the Commissioner's specific prior approval.

In the case of a plan sponsor that has elected to use interest rates under the monthly corporate bond yield curve, if with respect to a decrement the benefit is only expected to be paid for one-half of a year (because the decrement was assumed to occur in the middle of the year), the proposed regulations would provide that the interest rate for that year can be determined as if the benefit were being paid for the entire year.

Under the proposed regulations, the effective interest rate determined under section 430(h)(2)(A) is the single interest rate that, if used to determine the present value of the benefits taken into account in determining the plan's funding target for a plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d) as described in § 1.430(d)–1(b)(2) (without regard to calculations for plans in at-risk status under section 430(i)). The effective interest rate is used to adjust plan contributions made on a date other than the valuation date.

Under the proposed regulations, the interest rates used to determine the amount of shortfall amortization installments and waiver amortization installments are determined based on the dates those installments are assumed to be paid, using the same timing rules that apply for purposes of determining the target normal cost. Thus, for a plan that uses the segment rates, the first segment rate applies to the five shortfall amortization installments assumed to be paid during the first five years beginning on the valuation date for the plan year, and the

⁵ The same interest rate timing rules apply for purposes of determining present values for purposes of section 417(e)(3).

second segment rate applies to the two shortfall amortization installments that are assumed to be paid after that period.

V. Section 1.430(i)–1 Plans in At-Risk Status

The proposed regulations would provide rules and assumptions for determining the funding target and making other computations for certain defined benefit plans that are referred to as plans in “at-risk” status due to their significantly underfunded status. These rules apply to single employer defined benefit plans (including multiple employer plans) but do not apply to multiemployer plans. The at-risk rules do not apply to small plans. For this purpose, a small plan is defined as a plan sponsored by an employer that had 500 or fewer participants (including both active and inactive participants) in defined benefit plans (other than multiemployer plans) sponsored by the employer or any member of the employer’s controlled group on each day during the preceding plan year.

In general, the proposed regulations would provide that a plan is in at-risk status for a plan year if the funding target attainment percentage (FTAP) for the preceding plan year is less than 80% (65%, 70%, and 75%, for plan years beginning in 2008, 2009, and 2010, respectively),⁶ and the at-risk FTAP for the preceding plan year is less than 70 percent. For this purpose, the proposed regulations would provide that a plan’s FTAP for a plan year is a fraction (expressed as a percentage) determined as: (i) The value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B)), divided by (ii) the funding target of the plan for the plan year (determined without regard to section 430(i) and these proposed regulations). The proposed regulations would provide that the at-risk FTAP of a plan for a plan year is determined similarly except that the denominator is the at-risk funding target of the plan for the plan year (but determined without regard to the loading factor discussed in the following paragraph). The proposed regulations would provide that, in the case of a newly established plan, this FTAP and at-risk FTAP determination are assumed to be 100% for years before the plan exists.

In general, in accordance with section 430(i)(1), the proposed regulations would provide that the at-risk funding

target and the at-risk target normal cost of the plan for the plan year are generally determined in the same manner as for plans not in at-risk status but using special actuarial assumptions. In addition, the at-risk funding target and the at-risk target normal cost are increased to take into account a loading factor. In any case, the at-risk funding target and the at-risk target normal cost of a plan for a plan year cannot be less than the plan’s funding target and target normal cost determined without regard to the at-risk rules. This minimum value is determined on a plan-wide (rather than a participant-by-participant) basis.

The actuarial assumptions used to determine a plan’s at-risk funding target for a plan year are the actuarial assumptions that are applied under section 430, with certain modifications as set forth in the proposed regulations. Under these special actuarial assumptions, if an employee would be eligible to commence an immediate distribution upon termination of employment by the end of the plan year that begins 10 years after the end of the current plan year (that is, the end of the 11th plan year beginning with the current plan year), that employee is assumed to terminate and commence an immediate distribution at the earliest retirement date under the plan, or, if later, at the end of the current plan year. (However, the proposed regulations would provide that this special assumption does not apply to the extent the employee is otherwise assumed to retire during the current plan year. Thus, for example, if generally applicable retirement assumptions would provide for a 25% probability that an employee will retire during the current plan year, the special retirement age assumption would require the plan to assume a 75% probability that the employee will retire at the end of the plan year.) For this purpose, the proposed regulations would define the earliest retirement age under the plan as the earliest age at which a participant could terminate employment and receive an immediate distribution. In addition, the special actuarial assumptions in the proposed regulations would provide that all employees are assumed to elect the optional form of benefit available under the plan at the assumed retirement age that would result in the highest present value of benefits.

If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan’s funding target for the plan year is determined as a blend of the funding target determined as if the plan were not in at-risk status and

the funding target determined as if the plan had been in at-risk status for each of the previous 5 plan years. For this purpose, the funding target determined as if the plan had been in at-risk status for each of the previous 5 plan years is determined without applying the loading factor if the plan has not been in at-risk status for two of the last four plan years. The increase in the funding target to reflect the at-risk rules is phased in over 5 years at 20% per year. The proposed regulations provide similar rules for determining the at-risk target normal cost of a plan that has been in at-risk status for fewer than 5 consecutive plan years.

For purposes of applying the rules under section 430(i), the proposed regulations set forth rules for making certain calculations with respect to the first plan year to which section 430 applies to the plan. These rules are generally the same as the rules that apply for that plan year for purposes of section 436.

There is no special rule for determining the at-risk funding target for the plan year preceding the plan year section 430 first applies to the plan. This is because, for a plan to which section 430 applies beginning in 2008, if the plan’s FTAP for the preceding plan year was less than the 65% needed to be in at-risk status (pursuant to the transition rule described in section 430(i)(4)(B)), then the at-risk FTAP would necessarily be below the 70% needed for the plan to be in at-risk status (because the at-risk funding target cannot be less than the funding target for a plan that is not in at-risk status). However, plans for which the effective date of section 430 is delayed will have to determine the at-risk funding target for the plan year that precedes the plan year for which section 430 is first effective with respect to the plan.

Effective/Applicability Dates

Section 430 generally applies to plan years beginning on or after January 1, 2008. These regulations are proposed to apply to plan years beginning on or after January 1, 2009. However, in the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), the regulations are proposed to apply to plan years beginning on or after the date section 430 applies with respect to the plan. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in these proposed regulations for purposes of satisfying the requirements of section 430.

⁶ This phase-in of the 80% rule applies solely for plan years beginning in 2008 through 2010 and is not adjusted for plans described in § 1.430(i)–1(f)(2) for which the effective date of section 430 is delayed.

Under the proposed regulations, any change in a plan's funding method that is made for the first plan year section 430 applies to the plan and that is not inconsistent with the requirements of section 430 would be treated as having been approved by the Commissioner and would not require the Commissioner's specific prior approval. In addition, the Commissioner's specific prior approval is not required with respect to any actuarial assumptions that are adopted for the first plan year for which section 430 applies to the plan and that are not inconsistent with the requirements of section 430. Future guidance will cover procedures for obtaining the Commissioner's approval for changes in funding method and may provide for additional circumstances in which automatic approval is granted.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information imposed by these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The estimated burden imposed by the collection of information contained in these proposed regulations is 0.75 hours per respondent. Moreover, this burden is attributable to the flexibility given under the applicable statutory requirements under which a plan sponsor may make any of several elections related to the interest rate used for minimum funding purposes. The written elections under these proposed regulations are made by the plan sponsor upon occasion and will require minimal time to prepare. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the

clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Lauson C. Green and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.430(d)–1 is added to read as follows:

§ 1.430(d)–1 Determination of target normal cost and funding target.

(a) *In general*—(1) *Overview.* This section sets forth rules for determining a plan's target normal cost and funding target under sections 430(b) and 430(d), including guidance relating to the application of actuarial assumptions described in sections 430(h)(1) and 430(h)(4). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). For further guidance on actuarial assumptions, see § 1.430(h)(2)–1 (relating to interest rates) and §§ 1.430(h)(3)–1 and 1.430(h)(3)–2 (relating to mortality tables). See also § 1.430(i)–1 for the determination of the funding target and target normal cost for a plan that is in at-risk status.

(2) *Organization of regulation.*

Paragraph (b) of this section sets forth definitions of target normal cost and funding target. Paragraph (c) of this section provides rules regarding which

benefits are taken into account in determining a plan's target normal cost and funding target. Paragraph (d) of this section sets forth the rules regarding the plan provisions that are taken into account in making these determinations, and paragraph (e) of this section provides rules on which plan participants are taken into account for this purpose. Paragraph (f) of this section provides rules relating to the actuarial assumptions and the plan's funding method that are used to determine present values. Paragraph (g) of this section contains effective/applicability dates and transition rules.

(3) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the plan's funding target and target normal cost are computed separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Definition of target normal cost, funding target, and funding target attainment percentage*—(1) *Target normal cost*—(i) *In general.* For a plan that is not in at-risk status under section 430(i) for the plan year, the target normal cost of the plan for the plan year is the present value of all benefits that have accrued or have been earned (or that are expected to accrue or to be earned) under the plan during the plan year. See § 1.430(i)–1(d) and (e)(2) for the determination of target normal cost for a plan that is in at-risk status.

(ii) *Benefits accruing for a plan year.* The benefits that have been accrued or have been earned (or that are expected to accrue or to be earned) under a plan during a plan year include any increase in benefits during the plan year that is a result of any actual or projected increase in compensation during the current plan year, even if that increase in benefits is with respect to benefits attributable to services performed in a preceding plan year.

(2) *Funding target.* For a plan that is not in at-risk status under section 430(i) for the plan year, the funding target of the plan for the plan year is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year. See

§ 1.430(i)–1(c) and (e)(1) for the determination of the funding target for a plan that is in at-risk status.

(3) *Funding target attainment percentage.* See § 1.430(i)–1(b)(3) and § 1.436–1(j)(2) for rules relating to the determination of the funding target attainment percentage under section 430(d)(2).

(c) *Benefits taken into account*—(1) *In general*—(i) *Basic rule.* The benefits taken into account in determining the funding target and target normal cost under paragraph (b) of this section are all benefits earned or accrued under the plan, including retirement-type and ancillary benefits.

(ii) *Allocation of benefits*—(A) *Benefits that are based on accrued benefits.* If the amount of a benefit that is expected to be paid is a function of the accrued benefit at the time the benefit is expected to be paid, then the amount of the benefit that is taken into account in the funding target is determined by applying that function to the accrued benefit as of the beginning of the plan year and the amount of the benefit that is taken into account in the target normal cost is determined by applying that function to the increase in the accrued benefit for the plan year. For example, a benefit that is assumed to be payable at a particular early retirement age in the amount of 90% of the accrued benefit is taken into account in the funding target in the amount of 90% of the accrued benefit as of the beginning of the plan year, and that benefit is taken into account in the target normal cost in the amount of 90% of the increase in the accrued benefit for the plan year.

(B) *Benefits that are based on service.* If the amount of a benefit that is expected to be paid is not a function of the accrued benefit at the time the benefit is expected to be paid, but is a function of the participant's service at that time, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is determined by applying that function to the participant's service as of the first day of the plan year and the amount of the benefit that is taken into account in the target normal cost is the increase in that benefit for the plan year based on the additional year of service. For example, if a plan provides a post-retirement death benefit of \$500 per year of service, then the funding target is determined based on a death benefit of \$500 multiplied by a participant's service at the beginning of the year and the target normal cost is based on the additional \$500 in death benefits earned for one more year of service.

(C) *Other benefits.* If the amount of a benefit that is expected to be paid is neither a function of the accrued benefit at the time the benefit is expected to be paid as described in paragraph (c)(1)(ii)(A) of this section nor a function of the participant's service at that time as described in paragraph (c)(1)(ii)(B) of this section, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is based on the proportion of a participant's service as of the first day of the plan year relative to the service the participant will have when the participant meets the age and service eligibility requirements for the benefit, and the portion of the benefit that is taken into account in the target normal cost is the increase in the proportional benefit for the plan year. For example, if a plan provides a Social Security supplement for a participant who retires after 30 years of service that is equal to a participant's Social Security benefit, the funding target is determined based on the participant's Social Security benefit as of the beginning of the plan year multiplied by a fraction, the numerator of which is the participant's service as of the first day of the plan year and the denominator of which is 30 years. In such a case, the target normal cost is based on the increase in the proportional benefit taking into account one additional year of service and any changes in the participant's Social Security benefit.

(iii) *Application of section 436 limitations to funding target and target normal cost determination.* The determination of the funding target and target normal cost of a plan for a plan year is not permitted to take into account any limitations or anticipated limitations under section 436.

(2) *Payment of expenses from plan assets.* Plan administrative expenses paid (or expected to be paid) from plan assets for a plan year are not taken into account in the determination of a plan's target normal cost and funding target for that plan year.

(3) *Benefits provided by insurance.* A plan generally is required to reflect in the plan's funding target and target normal cost the liability for benefits that are funded through insurance contracts held by the plan, and to include in plan assets the value of the corresponding insurance contracts. Alternatively, in the case of benefits that are funded through insurance contracts purchased from an insurance company licensed under the laws of a State, the plan is permitted to exclude benefits provided under such contracts from the plan's funding target and target normal cost and to exclude the corresponding

insurance contracts from plan assets, but only to the extent that a participant's or beneficiary's right to receive those benefits is an irrevocable contractual right, based on premiums paid to the insurance company prior to the valuation date under the insurance contracts. Thus, for example, in the case of a retired participant receiving benefits from an annuity contract in pay status under which no premiums are required on or after the valuation date, a plan is permitted to exclude the benefits provided by the contract from the plan's funding target and target normal cost, provided that the value of the contract is also excluded from plan assets. Similarly, in the case of an active or deferred vested participant whose benefits are funded by a life insurance or annuity contract under which further premiums are required on or after the valuation date, a plan is permitted to exclude the benefits, if any, that would be paid from the contract if no further premiums were to be paid (for example, if the contract were to go on reduced paid-up status) from the plan's funding target and target normal cost, provided that the value of the contract is excluded from plan assets. A plan's treatment of benefits funded through insurance contracts pursuant to this paragraph (c)(3) is part of the plan's funding method. Accordingly, that treatment can be changed only with the consent of the Commissioner.

(d) *Plan provisions taken into account.* Except as provided in section 412(d)(2), the determination of a plan's funding target and target normal cost for a plan year is based on plan provisions that are adopted no later than the valuation date for the plan year and that become effective during that plan year. Section 412(d)(2) applies for purposes of determining whether a plan amendment is treated as having been adopted on the first day of the plan year (including a plan amendment adopted within 2½ months after the close of the plan year).

(e) *Plan population taken into account*—(1) *In general.* In making any determination of the funding target or target normal cost under paragraph (b) of this section, the plan population is determined as of the valuation date. The plan population must include three classes of individuals—

(i) Participants currently employed in the service of the employer;

(ii) Participants who are retired under the plan or who are otherwise no longer employed in the service of the employer; and

(iii) All other individuals currently entitled to benefits under the plan.

(2) *Special exclusion for "rule of parity" cases.* Certain individuals may

be excluded from the class of individuals described in paragraph (e)(1)(ii) of this section. The excludable individuals are those former participants who, prior to the valuation date for the plan year, have terminated service with the employer without vested benefits and whose service might be taken into account in future years because the 'rule of parity' of section 411(a)(6)(D) does not permit that service to be disregarded. However, if the plan's experience as to separated employees returning to service has been such that the exclusion described in this paragraph (e)(2) would be unreasonable, the exclusion would no longer apply.

(3) *Anticipated future participants.* In making any determination of the funding target or target normal cost under paragraph (b) of this section, the actuarial assumptions and funding method used for the plan must not anticipate the affiliation with the plan of future participants not employed in the service of the employer on the plan valuation date. However, any such determination may anticipate the affiliation with the plan of current employees who have not yet satisfied the participation (age and service) requirements of the plan as of the valuation date.

(f) *Actuarial assumptions and funding method used in determination of present value—(1) Establishment of actuarial assumptions and funding method—(i) General rules—(A) Assumptions and method cannot be changed for a plan year once established.* The determination of any present value or other computation under section 430 must be made on the basis of actuarial assumptions and a funding method. Actuarial assumptions established for a plan year in accordance with paragraph (f)(1)(ii) of this section cannot subsequently be changed for that plan year unless the Commissioner determines that the assumptions that were used are unreasonable. Similarly, a funding method established for a plan year in accordance with paragraph (f)(1)(ii) of this section cannot subsequently be changed for that plan year unless the Commissioner determines that the use of that funding method for that plan year is impermissible.

(B) *Scope of funding method.* A plan's funding method includes not only the overall funding method used by the plan but also each specific method of computation used in applying the overall method. However, the choice of which actuarial assumptions are appropriate to the overall method or to the specific method of computation is not a part of the funding method.

(ii) *Timing rule for establishing actuarial assumptions and funding method.* The actuarial assumptions and the funding method used by a plan for a plan year must be established not later than the due date (with extensions) for the filing of Form 5500, "Annual Return/Report of Employee Benefit Plan," for that plan year (or the last day of the 7th month after the end of the plan year in the case of a plan not required to file Form 5500). The filing of the first actuarial report (Schedule SB) for a plan year under section 6059 that reflects the use of actuarial assumptions and a funding method is treated as the establishment of those assumptions and the funding method for that plan year.

(2) *Interest and mortality rates.* Section 430(h)(2) and § 1.430(h)(2)–1 set forth the interest rates, and section 430(h)(3) and §§ 1.430(h)(3)–1 and 1.430(h)(3)–2 set forth the mortality tables, that must be used for purposes of determining any present value under this section.

(3) *Other assumptions.* In the case of actuarial assumptions other than those specified in sections 430(h)(2), 430(h)(3), and 430(i), each of those actuarial assumptions must be reasonable (taking into account the experience of the plan and reasonable expectations), and the actuarial assumptions, in combination, must offer the plan's enrolled actuary's best estimate of anticipated experience under the plan. See paragraph (f)(4)(iii) of this section for special rules for determining the present value of a single sum and similar distributions.

(4) *Probability of benefit payments in single sum or other optional forms—(i) In general.* This paragraph (f)(4) provides rules relating to the probability that benefit payments will be paid as single sums or other optional forms under a plan and the impact of that probability on the determination of the present value of those benefit payments under section 430.

(ii) *General rules of application.* Any determination of present value or any other computation under this section must take into account—

(A) The probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including single sum distributions), determined on the basis of the plan's experience and other related assumptions; and

(B) Any difference in the present value of future benefit payments that results from the use of actuarial assumptions in determining benefit payments in any such optional form of

benefits that are different from those prescribed by section 430(h).

(iii) *Single sum and similar distributions—(A) Distributions using section 417(e) assumptions.* In the case of a distribution that is subject to section 417(e)(3) and that is determined using the applicable interest rate and applicable mortality table under section 417(e)(3), for purposes of applying paragraph (f)(4)(ii) of this section, the computation of the present value of that distribution will be treated as having taken into account any difference in present value that results from the use of actuarial assumptions that are different from those prescribed by section 430(h) (as required under paragraph (f)(4)(ii)(B) of this section) if the present value of the distribution is determined in accordance with paragraph (f)(4)(iii)(B) of this section.

(B) *Substitution of annuity form—(1) In general.* Except as otherwise provided in this paragraph (f)(4)(iii)(B), the present value of a distribution is determined in accordance with this paragraph (f)(4)(iii)(B) if it is determined by valuing the annuity that corresponds to the distribution using special actuarial assumptions. Under these special assumptions, for the period beginning with the annuity starting date, the current applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date is substituted for the mortality table under section 430(h)(3) that would otherwise be used. In addition, under these special assumptions, the valuation interest rates under section 430(h)(2) are used for this purpose for all periods (as opposed to the interest rates under section 417(e)(3) which the plan uses to determine the amount of the benefit).

(2) *Optional application of generational mortality.* In determining the present value of a distribution under this paragraph (f)(4)(iii)(B), if a plan uses the generational mortality tables under § 1.430(h)(3)–1(a)(4) or § 1.430(h)(3)–2, the plan is permitted to use a 50–50 male-female blend of the annuitant mortality rates under the § 1.430(h)(3)–1(a)(4) generational mortality tables in lieu of the applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date.

(3) *Optional phase-in of section 417(e)(3) segment interest rates.* In determining the present value of a distribution under this paragraph (f)(4)(iii)(B), a plan is permitted to make adjustments to reflect differences between the phase-in of the section 430(h)(2) segment rates under section

430(h)(2)(G) and the adjustments to the segment rates under section 417(e)(3)(D)(iii).

(C) *Distributions subject to section 417(e)(3) using other assumptions.* In the case of a distribution that is subject to section 417(e)(3) but that is determined as the greater of the benefit determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and the benefit determined using some basis other than the section 417(e)(3) assumptions, for purposes of applying paragraph (f)(4)(ii)(B) of this section, the computation of present value must take into account the extent to which the present value of the distribution is greater than the present value determined using the rules of paragraph (f)(4)(iii)(B) of this section.

(D) *Distributions subject to section 411(a)(13).* In the case of an applicable defined benefit plan described in section 411(a)(13)(C), if the distribution is determined under the rules of section 411(a)(13)(A), the amount of the future distribution must be determined by projecting the future interest credits or equivalent amounts under the plan's interest crediting rules to the expected date of payment using reasonable actuarial assumptions.

(5) *Reasonable techniques permitted.* Any reasonable technique can be used to determine the present value of the benefits expected to be paid during a plan year, based on the interest rates and mortality assumptions applicable for the plan year. For example, the present value of a monthly retirement annuity payable at the beginning of each month can be determined—

(i) Using the standard actuarial approximation that reflects 13/24ths of the discounted expected payments for the year as of the beginning of the year and 11/24ths of the discounted expected payments for the year as of the end of the year; or

(ii) By assuming that the payment is made in the middle of the year.

(6) *Approval of significant changes in actuarial assumptions for large plans—*

(i) *In general.* A large plan as described in paragraph (f)(6)(ii) of this section cannot change any actuarial assumption used to determine the plan's funding target for a plan year without the approval of the Commissioner if the change in assumptions results in a decrease in the plan's funding shortfall (within the meaning of section 430(c)(4)) for the current plan year (disregarding the effect on the plan's funding shortfall resulting from changes in interest and mortality assumptions) that exceeds \$50,000,000, or that exceeds \$5,000,000 and is 5 percent or

more of the funding target of the plan before such change.

(ii) *Affected plans.* A plan is a large plan as described in this paragraph (f)(6)(ii) if—

(A) The plan is a defined benefit plan (other than a multiemployer plan) to which Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) applies; and

(B) The aggregate unfunded vested benefits used to determine premiums for the plan year (as determined under section 4006(a)(3)(E)(iii) of ERISA) of the plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of ERISA) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of ERISA) which are covered by Title IV (disregarding multiemployer plans and disregarding plans with no unfunded vested benefits) exceed \$50,000,000.

(7) *Examples.* The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions: the normal retirement age is 65, the plan is subject to section 430 starting in 2008, the plan year is the calendar year, and the valuation date is January 1. The examples read as follows:

Example 1. (i) Plan P provides an accrued benefit equal to 1.0% of a participant's highest 3-year average compensation for each year of service. Plan P provides that an early retirement benefit can be received at age 60 equal to the participant's accrued benefit reduced by 0.5% per month for early commencement. On January 1, 2008, Participant A is age 60 and has 12 years of past service. Participant A's compensation for the years 2005 through 2007 was \$47,000, \$50,000, and \$52,000, respectively. Participant A's rate of compensation at December 31, 2007, is \$54,000 and A's rate of compensation for 2008 is assumed not to increase at any point during 2008.

(ii) Participant A's annual accrued benefit as of January 1, 2008, is \$5,960 $[0.01 \times 12 \times (\$47,000 + \$50,000 + \$52,000)/3]$. Participant A's expected benefit accrual for 2008 is \$800 $[0.01 \times 13 \times (\$50,000 + \$52,000 + \$54,000)/3 - \$5,960]$.

(iii) The early retirement benefit, with respect to the decrement at age 60, that is taken into account when determining the 2008 funding target is \$4,172 $[\$5,960 \text{ accrued benefit} \times (1 - 0.005 \times 60 \text{ months})]$. The annual accrual of the early retirement benefit, with respect to the decrement at age 60, that is taken into account when determining the 2008 target normal cost is \$560 $[\$800 \text{ annual accrual} \times (1 - 0.005 \times 60 \text{ months})]$.

(iv) The early retirement benefit, with respect to the decrement at age 61, that is taken into account when determining the 2008 funding target is \$4,529.60 $[\$5,960 \text{ accrued benefit} \times (1 - 0.005 \times 48 \text{ months})]$. The annual accrual of the early retirement benefit, with respect to the decrement at age

61, that is taken into account when determining the 2008 target normal cost is \$608 $[\$800 \text{ annual accrual} \times (1 - 0.005 \times 48 \text{ months})]$.

Example 2. (i) The facts are the same as in *Example 1*. In addition, the plan offers a \$500 temporary monthly supplement to participants who complete 15 years of service and retire from active employment after attaining age 60. The temporary supplement is available for retirements occurring at ages 60 and 61, and is payable until the participant turns age 62. In addition, the supplement is limited so that it does not exceed the participant's social security benefit payable at age 62. On January 1, 2008, Participant B is age 55 and has 20 years of past service, and Participant C is age 60 and has 14 years of past service. For Participants B and C, the projected social security benefit is greater than \$500 per month.

(ii) For Participant B, the allocable portion of the annual temporary supplement that is taken into account when determining the funding target for 2008 is \$4,800, which applies for the decrement at age 60 until age 62 $[(\$500 \times 12 \text{ months}) \times 20 \text{ years of past service} / 25 \text{ years of service at eligibility for the supplement}]$. This same dollar amount will apply for the assumed decrement at age 60 or age 61, but the period of time the amount will be paid is different for those two decrements.

(iii) For Participant C, the allocable portion of the annual temporary supplement that is taken into account when determining the funding target for 2008 is \$5,600, which is payable for the decrement at age 61 until age 62 $[(\$500 \times 12 \text{ months}) \times 14 \text{ years of past service} / 15 \text{ years of service at eligibility for the supplement}]$.

Example 3. (i) The facts are the same as in *Example 1*. In addition, the plan provides a disability benefit to participants who become disabled after completing 15 years of service. The disability benefit is payable at normal retirement age. For purposes of calculating the disability benefit, service continues to accrue until normal retirement age (unless recovery or retirement occurs earlier). Further, compensation is deemed to continue to normal retirement age at the same rate as when the disability began.

(ii) Participant A will be eligible for the disability benefit at age 63 when he will have 15 years of service. Participant A's projected annual disability benefit at normal retirement age is \$9,180 (that is, 1% of highest 3-year average compensation of \$54,000 multiplied by 17 years of deemed service at normal retirement age).

(iii) The allocable portion of the disability benefit that is taken into account when determining the 2008 funding target with respect to the disability decrements occurring at age 63 and later is \$7,344 $[\$9,180 \times (12 \text{ years of past service} / 15 \text{ years of service at eligibility for disability benefits})]$.

(iv) The disability benefit accrual that is taken into account when determining the 2008 target normal cost with respect to the disability decrements occurring at age 63 and later is \$612 $[\$9,180 \times (1 \text{ year of deemed service} / 15 \text{ years of service at eligibility for disability benefits})]$.

Example 4. (i) Retiree D, a participant in Plan P, is a male age 72 and is receiving a

\$100 monthly straight life annuity. The 2008 actuarial valuation is performed using the segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)), and the 2008 annuitant and nonannuitant (male and female) mortality tables (published in § 1.430(h)(3)–1).

(ii) The present value of Retiree D's straight life annuity on the valuation date is \$10,624. This is equal to the sum of: \$5,005, which is the present value of payments expected to be made during the first 5 years, using the first segment interest rate of 5.26%; \$5,431, which is the present value of payments expected to be made during the next 15 years, using the second segment interest rate of 5.82%; and \$188, which is the present value of payments expected to be made after 20 years, using the third segment interest rate of 6.38%.

Example 5. (i) The facts are the same as in *Example 4*, except Plan P does not provide for early retirement benefits or single sum distributions. The actuary assumes that no participants terminate employment prior to age 50 (other than by death), there is a 5% probability of withdrawal at age 50, and that those participants who do withdraw receive a deferred annuity starting at age 65. Participant E is a male age 46 on January 1, 2008, and has an annual accrued benefit of \$23,000 beginning at age 65.

(ii) After taking into account the 5% probability of withdrawal, the funding target associated with Participant E's assumed age 50 withdrawal benefit in the 2008 actuarial valuation is \$3,573.69. This is equal to the sum of: \$363.55, which is the present value of payments expected to be made during the year the participant turns age 65 (the 20th year after the valuation date), using the second segment interest rate of 5.82%; and \$3,210.14, which is the present value of payments expected to be made after the 20th year, using the third segment interest rate of 6.38%.

Example 6. (i) The facts are the same as in *Example 5*, except the plan offers a single sum distribution payable at normal retirement age (age 65) determined based on

the applicable interest rate and the applicable mortality table under section 417(e)(3). The actuary assumes that 70% of the participants will elect a single sum upon retirement and the remaining 30% will elect a straight life annuity.

(ii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed single sum payment, deferred to age 65, is \$2,564.86. This is calculated in the same manner as the present value of annuity payments, except that the 2008 applicable mortality rates are substituted for the 2008 male annuitant mortality rates. This portion of the 2008 funding target is equal to the sum of: \$254.63, which is the present value of annuity payments expected to be made between age 65 and 66 (during the 20th year after the valuation date), using the second segment interest rate of 5.82%; and \$2,310.23, which is the present value of annuity payments expected to be made after the 20th year following the valuation date, using the third segment interest rate of 6.38%. These present value amounts reflect the 2008 male nonannuitant mortality rates prior to the assumed commencement of benefits at age 65, the 100% probability of retiring at age 65, and the 70% probability that E will elect a single sum distribution.

(iii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed straight life annuity, deferred to age 65, is equal to 30% of the result obtained in *Example 5*.

Example 7. (i) The facts are the same as in *Example 6*, except the plan offers an immediate single sum upon withdrawal at age 50 determined based on the applicable interest rate and the applicable mortality table under section 417(e)(3). The actuary assumes that 70% of the participants will elect to receive a single sum distribution upon withdrawal.

(ii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to

Participant E's assumed single sum payment is \$2,523.03. This is calculated in the same manner as the present value of annuity payments, except that the 2008 applicable mortality rates are substituted for the 2008 male annuitant and nonannuitant mortality rates after the annuity starting date. This portion of the 2008 funding target is equal to the sum of: \$250.48, which is the present value of annuity payments expected to be made between age 65 and 66 (during the 20th year after the valuation date), using the second segment interest rate at an interest rate of 5.82%; and \$2,272.55, which is the present value of annuity payments expected to be made after the 20th year following the valuation date, using the third segment interest rate of 6.38%. These present value amounts reflect the 2008 male nonannuitant mortality rates prior to the assumed single sum distribution age of 50, and the 70% probability that E will elect a single sum distribution.

Example 8. (i) The facts are the same as in *Example 5*, except that the plan sponsor elects under section 430(h)(2)(D)(ii) to use the monthly corporate bond yield curve instead of segment rates. The enrolled actuary assumes payments are made monthly throughout the year and uses the interest rate from the middle of the monthly corporate bond yield curve because this mid-year yield rate most closely matches the average timing of benefits paid. Solely for purposes of this example, assume that the monthly yield curve derived from the August 2007 data is applicable (even though the plan would actually have to use the yield curve derived from the December 2007 data).

(ii) After taking into account the 5% probability of withdrawal, the funding target associated with Participant E's assumed age 50 withdrawal benefit in the 2008 actuarial valuation is \$3,359.69. This reflects the sum of each year's expected payments, discounted at the yield rates described in paragraph (i) of this *Example 8*, as shown below:

Age	Discount period	Yield rate (percent)	Present value
65	19.5	6.47	\$322.75
66	20.5	6.49	298.51
67	21.5	6.51	275.62
68 and over	Varies	Varies	2,462.81
Total .....	.....	.....	3,359.69

Example 9. (i) Plan F is a cash balance plan that permits an immediate payment of a single sum equal to the participant's hypothetical account balance upon termination of employment. Plan terms provide that the hypothetical account is credited with interest at the 3rd segment rate. In the 2008 actuarial valuation, the enrolled actuary assumes that the hypothetical account balances will increase with annual interest credits of 5.0% until the participant commences receiving his or her benefit, that all participants will retire on the first day of

the plan year in which they attain age 65 (that is, no participant will terminate employment prior to age 65 other than by death), and that 100% of participants will elect a single sum upon retirement. The 2008 actuarial valuation is performed using the 24-month average segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)), and the separate annuitant and non-annuitant mortality tables under § 1.430(h)(3)–1 for 2008 for periods prior to commencement of benefits (however, the

annuitant mortality table is never used because the only assumed payment is a single sum). No mortality table is required for the period after commencement of benefits because the single sum payment is equal to the account balance. Participant F is a male age 61 on January 1, 2008, and has a hypothetical account balance equal to \$150,000 on that date.

(ii) Participant F's hypothetical account balance projected to January 1, 2012 (the plan year in which F attains age 65) is \$182,326 based on the assumed annual interest

crediting rate of 5%. The 2008 funding target attributable to Participant F's benefit at age 65 is \$145,905, which is calculated by discounting the projected hypothetical account balance of \$182,326 using the first segment rate of 5.26% and the male non-annuitant mortality rates.

(iii) In contrast, if the enrolled actuary assumes that the hypothetical account balances increase with annual interest credits of 6.0%, the 2008 funding target attributable to Participant F's benefit at age 65 is \$151,544 calculated by discounting the projected hypothetical account balance of \$189,372 using the first segment rate of 5.26% and the male non-annuitant mortality rates.

(g) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *Approval for changes in funding method.* Any change in a plan's funding method that is made for the first plan year for which section 430 applies to the plan and that is not inconsistent with the requirements of section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

(4) *Approval for changes in actuarial assumptions.* The Commissioner's specific prior approval is not required with respect to any actuarial assumptions that are adopted for the first plan year for which section 430 applies to the plan and that are not inconsistent with the requirements of section 430.

Par. 3 Section 1.430(g)–1 is added to read as follows:

§ 1.430(g)–1 Valuation date and valuation of plan assets.

(a) *In general*—(1) *Overview.* This section provides rules relating to a plan's valuation date and the valuation of a plan's assets for a plan year under section 430(g). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to the rules of section 412, but do not apply to

multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes valuation date rules. Paragraph (c) of this section describes rules regarding the determination of the asset value for purposes of a plan's actuarial valuation. Paragraph (d) of this section contains rules for taking employer contributions into account in the determination of the value of plan assets. Paragraph (e) of this section contains an example. Paragraph (f) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Thus, in such a case, the value of plan assets is determined separately for each employer under the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Valuation date*—(1) *In general.* The determination of the funding target, target normal cost, and asset value of a plan for a plan year is made as of the valuation date of the plan for that plan year. Except as provided in paragraph (b)(2) of this section, the valuation date of a plan for any plan year is the first day of the plan year.

(2) *Exception for small plans*—(i) *In general.* If, on each day during the preceding plan year, a plan had 100 or fewer participants (including active and inactive participants and all other individuals entitled to future benefits), the plan may designate any day during the plan year as its valuation date for that plan year and succeeding plan years. For purposes of this paragraph (b)(2)(i), all defined benefit plans (other than multiemployer plans as defined in section 414(f)) maintained by an employer are treated as one plan, but only participants with respect to that employer or that employer's controlled group members are taken into account.

(ii) *Employer determination.* For purposes of this paragraph (b)(2), the employer includes all members of the employer's controlled group determined pursuant to sections 414(b), (c), (m), and (o).

(iii) *Application of exception in first plan year.* In the case of the first plan year of any plan, the exception for small plans under paragraph (b)(2)(i) of this

section is applied by taking into account the number of participants that the plan is reasonably expected to have on each day during the first plan year.

(iv) *Valuation date is part of funding method.* The selection of a plan's valuation date is part of the plan's funding method and, accordingly, may only be changed with the consent of the Commissioner. The change of a plan's valuation date that is required by section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's prior specific approval.

(c) *Determination of asset value*—(1) *In general*—(i) *General use of fair market value.* Except as provided in this paragraph (c), the value of plan assets for purposes of section 430 is equal to the fair market value of plan assets on the valuation date. Prior year contributions made after the valuation date and current year contributions made before the valuation date are taken into account to the extent provided in paragraph (d) of this section.

(ii) *Fair market value.* The fair market value of an asset is determined as the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The Commissioner may, in guidance of general applicability, issue guidance on the valuation of insurance contracts. See § 601.601(d)(2) of this chapter.

(2) *Averaging of fair market values*—(i) *In general.* Subject to the plan asset corridor rules of paragraph (c)(2)(iii) of this section, a plan is permitted to determine the value of plan assets on the valuation date as the average of the fair market value of assets on the valuation date and the adjusted fair market value of assets determined for one or more earlier determination dates using the method described in this paragraph (c)(2). The period of time between the valuation date and each of the earlier determination dates must be equal and that period of time cannot exceed 12 months. In addition, the earliest such determination date cannot be earlier than the last day of the 25th month before the valuation date of the plan year. In a typical situation, the earlier determination dates will be the two immediately preceding valuation dates. The method of determining the value of assets is part of the plan's funding method and, accordingly, may only be changed with the consent of the Commissioner.

(ii) *Adjusted fair market value.* The adjusted fair market value of plan assets for a prior determination date is the fair

market value of plan assets on that date, increased for contributions included in the plan's asset balance on the current valuation date that were not included in the plan's asset balance on the earlier determination date, and reduced for benefits and administrative expenses paid from plan assets during the same period.

(iii) *Restriction to 90–110 percent corridor*—(A) *Asset value less than 90 percent of fair market value.* If the value of plan assets determined under paragraph (c)(2)(i) of this section is less than 90 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (c)(2) is equal to 90 percent of the fair market value of plan assets.

(B) *Asset value greater than 110 percent of fair market value.* If the value of plan assets determined under paragraph (c)(2)(i) of this section is greater than 110 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (c)(2) is equal to 110 percent of the fair market value of plan assets.

(3) *Qualified transfers to health benefit accounts.* In the case of a qualified transfer (as defined in section

420), any assets so transferred are not treated as plan assets for purposes of section 430 and this section.

(d) *Accounting for contribution receipts*—(1) *Prior year contributions*—(i) *In general.* For purposes of determining the value of plan assets under paragraph (c) of this section, if an employer makes a contribution to the plan after the valuation date for the plan year, and the contribution is for a preceding plan year, then the present value of the contribution determined as of that valuation date is taken into account as an asset of the plan as of the valuation date. For this purpose, the present value is determined using the effective interest rate under section 430(h)(2)(A) for the preceding plan year.

(ii) *Special rule for plan years beginning before plan's first effective plan year.* Notwithstanding paragraph (d)(1)(i) of this section, in the case of a plan's first effective plan year, if the plan sponsor makes a contribution to the plan after the valuation date for the first effective plan year and that contribution is for a preceding plan year, then the contribution is taken into account as a plan asset under paragraph (d)(1)(i) of this section without applying any present value discount.

(2) *Current year contributions made before valuation date.* For purposes of determining the value of plan assets under paragraph (c) of this section, if an employer makes a contribution for a plan year before that year's valuation date, that contribution (and any interest on the contribution for the period between the contribution date and the valuation date, determined using the effective interest rate under section 430(h)(2)(A) for the plan year) must be subtracted from plan assets in determining the value of plan assets as of the valuation date.

(e) *Example.* The following example illustrates the application of this section:

Example. (i) *Facts.* All assets of Plan F are invested in a trust fund, the plan year is the calendar year, and the valuation date is January 1. The actuarial value is determined by averaging fair market value over the valuation date and the preceding two valuation dates. For each plan year, all contributions for the plan year are made during that plan year. An actuarial valuation is performed as of January 1, 2019. The fair market value of assets, the plan contributions, the benefit payments, and other relevant items for 2017 through 2019 are as follows:

	2017	2018	2019
Fair market value: Jan. 1	\$196,500	\$238,000	\$228,000
Contributions	62,000	66,000	.....
Benefit payments	(24,000)	(25,000)	.....
Expenses	(7,000)	(7,500)	.....
Interest and dividends	7,500	7,000	.....
Net realized gains (losses)	6,000	(8,500)	.....
Balancing item	(3,000)	(42,000)	.....
Fair market value: Dec. 31	238,000	228,000	.....

(ii) *Computation of average value.* The average value as of January 1, 2019, is computed as follows:

Adjusted values	2017	2018	2019
Fair market value: January 1	\$196,500	\$238,000	\$228,000
Net adjustments:			
Contributions	128,000	66,000	.....
Benefits Paid	(49,000)	(25,000)	.....
Expenses Paid	(14,500)	(7,500)	.....
Total	261,000	271,500	228,000

Average value as of January 1, 2019 equals: $\$261,000 + \$271,500 + \$228,000 \div 3 = \$253,500$.

(iii) *Conclusion.* Having determined an average value as of January 1, 2019 equal to \$253,500, Plan F must confirm that this value satisfies the 90–110 percent corridor rules under paragraph (c)(2)(iii) of this section. Because 110% of \$228,000 equals \$250,800, the value of Plan F's assets under paragraph (c)(2) of this section must be limited to \$250,800 (rather than \$253,500) for this

purpose. This valuation method meets the requirements of this section.

(f) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1,

2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed

in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year to which section 430 applies to the plan.

(4) *Approval for changes in the valuation date and valuation method for first effective plan year.* Any change in a plan's valuation date or asset valuation method that is made for the first effective plan year and that is not inconsistent with the requirements of section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

Par. 4. Section 1.430(h)(2)–1 is added to read as follows:

§ 1.430(h)(2)–1 Interest rates used to determine present value.

(a) *In general.*—(1) *Overview.* This section provides rules relating to the interest rates to be applied for a plan year under section 430(h)(2). Section 430(h)(2) and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes how the segment interest rates are used for a plan year. Paragraph (c) of this section describes those segment rates. Paragraph (d) of this section describes the monthly corporate bond yield curve that is used to develop the segment rates. Paragraph (e) of this section describes certain elections that are permitted to be made under this section. Paragraph (f) of this section describes other rules related to interest rates. Paragraph (g) contains effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Thus, each employer under such a multiple employer plan may make elections with respect to the interest rate rules under this section that are independent of the elections of other employers under the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the

election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Interest rates for determining plan liabilities.*—(1) *In general.* For purposes of determining the target normal cost and the funding target for any plan year, the interest rates used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan are determined as set forth in this paragraph (b).

(2) *Benefits payable within 5 years.* In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

(3) *Benefits payable after 5 years and within 20 years.* In the case of benefits expected to be payable during the 15-year period beginning after the end of the period described in paragraph (b)(2) of this section, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the second segment rate with respect to the applicable month, as described in paragraph (c)(2)(ii) of this section.

(4) *Benefits payable after 20 years.* In the case of benefits expected to be payable after the period described in paragraph (b)(3) of this section, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the third segment rate with respect to the applicable month, as described in paragraph (c)(2)(iii) of this section.

(5) *Applicable month.* Except as provided in paragraph (e) of this section, the term “applicable month” for purposes of this paragraph (b) means the month that includes the valuation date of the plan for the plan year.

(6) *Special rule for certain airlines.*—(i) *In general.* Pursuant to section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28 (121 Stat. 112), for a plan sponsor that makes the election described in section 402(a)(2) of the Pension Protection Act of 2006 (PPA '06), Public Law 109–280 (120 Stat. 780), the interest rate required to be used to determine the plan's funding

target for each of the 10 years under that election is 8.25 percent (rather than the segment rates otherwise described in this paragraph (b)).

(ii) *Special interest rate not applicable for other purposes.* The special interest rate described in paragraph (b)(6)(i) of this section does not apply for other purposes such as the determination of the plan's target normal cost.

(c) *Segment rates.*—(1) *Overview.* This paragraph (c) sets forth rules for determining the first, second, and third segment rates for purposes of paragraph (b) of this section. The first, second, and third segment rates are set forth in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. See paragraph (g)(3) of this section for a transition rule under which the definition of the segment rates is modified for plan years beginning in 2008 and 2009.

(2) *Definition of segment rates.*—(i) *First segment rate.* For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “first segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the first 5 years of each of those yield curves.

(ii) *Second segment rate.* For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “second segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the portion of each of those yield curves corresponding to the 15-year period that follows the end of the 5-year period described in paragraph (c)(2)(i) of this section.

(iii) *Third segment rate.* For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “third segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the portion of each of those yield curves corresponding to the 40-year period that

follows the end of the 15-year period described in paragraph (c)(2)(ii) of this section.

(d) *Monthly corporate bond yield curve*—(1) *In general.* For purposes of this section, the “monthly corporate bond yield curve” is, with respect to any month, a yield curve that is prescribed by the Commissioner for that month based on yields for that month on investment grade corporate bonds with varying maturities that are in the top three quality levels available.

(2) *Determination and publication of yield curve.* A description of the methodology for determining the monthly corporate bond yield curve is provided in guidance issued by the Commissioner that is published in the Internal Revenue Bulletin. The yield curve for a month will be set forth in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(e) *Elections*—(1) *In general.* This paragraph (e) describes elections that a plan sponsor can make to use alternative interest rates under this section. Any election under this section must be made by providing written notification of the election to the plan’s enrolled actuary. Any election in this paragraph (e) is part of the plan’s funding method and, accordingly, may only be adopted or changed with the consent of the Commissioner.

(2) *Elections for alternative date.* A plan sponsor that is using segment rates as provided under paragraph (b) of this section may elect the use of an alternative month as the applicable month for purposes of paragraph (b)(5) of this section, provided that the alternative month is one of the 4 months that precede the month that includes the valuation date of the plan for the plan year.

(3) *Election not to apply transition rule.* The plan sponsor may elect not to apply the transition rule in paragraph (g)(3) of this section.

(4) *Election to use full yield curve*—(i) *In general.* For purposes of determining the minimum required contribution under section 430, the plan sponsor may elect to use interest rates under the monthly corporate bond yield curve described in paragraph (d) of this section for the month preceding the month that includes the valuation date in lieu of the segment rates determined under paragraph (c) of this section. These purposes include determining the installments and present values described in paragraph (f)(2) of this section. In order to address the timing of benefit payments during a year, reasonable approximations are

permitted to be used to value benefit payments that are expected to be made during a plan year.

(ii) *Reasonable techniques permitted.* In the case of a plan sponsor using the monthly corporate bond yield curve under this paragraph (e)(4), if with respect to a decrement the benefit is only expected to be paid for one-half of a year (because the decrement was assumed to occur in the middle of the year), the interest rate for that year can be determined as if the benefit were being paid for the entire year. See § 1.430(d)–1(f)(5) for additional reasonable techniques that can be used in determining present value.

(5) *Plan sponsor.* For purposes of the elections described in this section, any reference to the plan sponsor generally means the employer or employers responsible for making contributions to or under the plan. In the case of plans that are multiple employer plans to which section 413(c)(4)(A) does not apply, any reference to the plan sponsor means the plan administrator within the meaning of section 414(g).

(f) *Interest rates used for other purposes*—(1) *Effective interest rate.* The effective interest rate determined under section 430(h)(2)(A) is the single interest rate that, if used to determine the present value of the benefits that are taken into account in determining the plan’s funding target for a plan year, would result in an amount equal to the plan’s funding target determined for the plan year under section 430(d) as described in § 1.430(d)–1(b)(2) (without regard to calculations for plans in at-risk status under section 430(i)).

(2) *Interest rates used for determining shortfall amortization installments and waiver amortization installments.* The interest rates used to determine the amount of shortfall amortization installments and waiver amortization installments and the present value of those installments are determined based on the dates those installments are assumed to be paid, using the same timing rules that apply in determining target normal cost as described in paragraph (b) of this section. Thus, for a plan that uses the segment rates described in paragraph (c) of this section, the first segment rate applies to installments assumed to be paid during the first five plan years beginning on the valuation date for the plan year, and the second segment rate applies to installments assumed to be paid during the subsequent 15-year period. For purposes of this paragraph (f)(2), the shortfall amortization installments for a plan year are assumed to be paid on the valuation date for that plan year. Thus, for example, for a plan that uses the

segment rates described in paragraph (c) of this section, the shortfall amortization installment for the fifth plan year following the current plan year (the sixth installment) is assumed to be paid on the valuation date for that year so that such shortfall amortization installment will be determined using the second segment rate.

(g) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA ’06, this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *Transition rule*—(i) *In general.* Notwithstanding the general rules for determination of segment rates under paragraph (c)(2) of this section, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month is equal to the sum of—

(A) The product of that rate for that month determined without regard to this paragraph (g)(3), multiplied by the applicable percentage; and

(B) The product of the weighted average interest rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as that provision was in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) *Applicable percentage.* For purposes of this paragraph (g)(3), the applicable percentage is 33-1/3 percent for plan years beginning in 2008 and 66-2/3 percent for plan years beginning in 2009.

(iii) *New plans ineligible.* The transition rule of this paragraph (g)(3) does not apply to a plan if the first plan year of the plan begins on or after January 1, 2008.

(4) *Approval to make elections in first effective plan year.* In the case of the first plan year to which section 430 applies to a plan, the plan sponsor’s elections described in paragraph (e) of this section are treated as having been approved by the Commissioner and do not require the Commissioner’s specific prior approval.

Par. 5 Section 1.430(i)–1 is added to read as follows:

§ 1.430(i)-1 Special rules for plans in at-risk status.

(a) *In general*—(1) *Overview*. This section provides special rules related to determining the funding target and making other computations for certain defined benefit plans that are in at-risk status for the plan year. Section 430(i) and this section apply to single employer defined benefit plans (including multiple employer plans) but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes rules for determining whether a plan is in at-risk status for a plan year, including the determination of a plan's funding target attainment percentage and at-risk funding target attainment percentage. Paragraph (c) of this section describes the funding target for a plan in at-risk status. Paragraph (d) of this section describes the target normal cost for a plan in at-risk status. Paragraph (e) of this section describes rules regarding how the funding target and target normal cost are determined for a plan that has been in at-risk status for fewer than 5 consecutive years. Paragraph (f) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans*. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, for example, at-risk status is determined separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Determination of at-risk status of a plan*—(1) *General rule*. Except as otherwise provided in this section, a plan is in at-risk status for a plan year if—

- (i) The funding target attainment percentage for the preceding plan year (determined under paragraph (b)(3) of this section) is less than 80 percent; and
- (ii) The at-risk funding target attainment percentage for the preceding plan year (determined under paragraph (b)(4) of this section) is less than 70 percent.

(2) *Small plan exception*. If, on each day during the preceding plan year, a plan had 500 or fewer participants (including both active and inactive participants), the plan is not treated as

in at-risk status for the plan year. For purposes of this paragraph (b)(2), all defined benefit plans (other than multiemployer plans as defined in section 414(f)) maintained by an employer (or any member of the employer's controlled group) are treated as one plan, but only participants with respect to that employer or member are taken into account. For this purpose, the rules of section 412(d)(3) and § 1.430(g)-1(b)(2)(ii) apply.

(3) *Funding target attainment percentage*. The funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage)—

(i) The numerator of which is the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B)); and

(ii) The denominator of which is the funding target of the plan for the plan year (determined without regard to section 430(i) and this section).

(4) *At-risk funding target attainment percentage*. The at-risk funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage)—

(i) The numerator of which is the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B); and

(ii) The denominator of which is the at-risk funding target of the plan for the plan year (determined under paragraph (c) of this section, but without regard to the loading factor imposed under paragraph (c)(2)(ii) of this section).

(5) *Special rules*—(i) *Special rule for new plans*. In the case of a newly established plan, the funding target attainment percentage under paragraph (b)(3) of this section and the at-risk funding target attainment percentage under paragraph (b)(4) of this section are assumed to be 100 percent for years before the plan exists. Except as otherwise provided in paragraph (b)(5)(ii) of this section, a plan that has a predecessor plan in accordance with section 414(a) or § 1.415(f)-1(c) is not a newly established plan under this rule.

(ii) *Special rules for mergers, acquisitions, and spinoffs*. [Reserved]

(6) *Special rule for determining at-risk status of plans of specified automobile manufacturers*. See section 430(i)(4)(C) for special rules for determining the at-risk status of plans of specified automobile and automobile parts manufacturers.

(c) *Funding target for plans in at-risk status*—(1) *In general*. If the plan has

been in at-risk status for 5 consecutive years, including the current plan year, then the funding target for the plan is the at-risk funding target determined under paragraph (c)(2) of this section. See paragraph (e) of this section for the determination of the funding target where the plan is in at-risk status for the plan year but was not in at-risk status for one or more of the 4 preceding plan years.

(2) *At risk funding target*—(i) *Use of modified actuarial assumptions*. Except as provided in this paragraph (c)(2), the at-risk funding target of the plan for the plan year is equal to the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined in accordance with § 1.430(d)-1 but using the additional actuarial assumptions described in paragraph (c)(3) of this section.

(ii) *Funding target includes load*. The at-risk funding target is increased by the sum of—

(A) \$700 multiplied by the number of participants in the plan (including active participants, inactive participants, and beneficiaries); plus

(B) Four percent of the funding target (determined under § 1.430(d)-1(b)(2) as if the plan was not in at-risk status) of the plan for the plan year.

(iii) *Minimum amount*.

Notwithstanding any otherwise applicable provisions of this section, the at-risk funding target of a plan for a plan year is not less than the plan's funding target for the plan year determined without regard to this section.

(3) *Additional actuarial assumptions*—(i) *In general*. The actuarial assumptions used to determine a plan's at-risk funding target for a plan year are the actuarial assumptions that are applied under section 430, with the modifications described in this paragraph (c)(3).

(ii) *Special retirement age assumption*—(A) *Employees eligible to retire and collect benefits within 11 years*. Subject to paragraph (c)(3)(ii)(B) of this section, if an employee would be eligible to commence an immediate distribution by the end of the plan year that begins 10 years after the end of the current plan year (that is, the end of the 11th plan year beginning with the current plan year), that employee is assumed to commence an immediate distribution at the earliest retirement date under the plan, or, if later, at the end of the current plan year. The rule of this paragraph (c)(3)(ii)(A) does not affect the application of plan assumptions regarding an employee's termination of employment prior to the employee's earliest retirement date.

(B) *Employees otherwise assumed to retire immediately.* The special retirement age assumption of paragraph (c)(3)(ii)(A) of this section does not apply to an employee to the extent the employee is otherwise assumed to retire during the current plan year. Thus, for example, if generally applicable retirement assumptions would provide for a 25% probability that an employee will retire during the current plan year, the special retirement age assumption of paragraph (c)(3)(ii)(A) of this section will require the plan to assume a 75% probability that the employee will retire at the end of the plan year.

(C) *Definition of earliest retirement date.* For purposes of paragraph (c)(3)(ii) of this section, a plan's earliest retirement date is the earliest date on which a participant can commence receiving an immediate distribution. See § 1.401(a)-20, Q&A-17(b).

(iii) *Requirement to assume most valuable benefit.* An employee who is assumed to retire at a date determined under paragraph (c)(3)(ii) of this section is assumed to elect the optional form of benefit available under the plan at that date that would result in the highest present value of benefits. The plan's actuary is permitted to use reasonable assumptions in determining the optional form of benefit under the plan that would result in the highest present value of benefits for this purpose.

(d) *Target normal cost of plans in at-risk status—(1) General rule.* If the plan has been in at-risk status for 5 consecutive years, including the current plan year, then the target normal cost for the plan is the at-risk target normal cost determined under paragraph (d)(2) of this section. See paragraph (e) of this section for the determination of the target normal cost where the plan is in at-risk status for the plan year but was not in at-risk status for one or more of the 4 preceding plan years.

(2) *At-risk target normal cost—(i) Use of modified actuarial assumptions.* Except as provided in this paragraph (d)(2), the at-risk target normal cost of a plan for the plan year is equal to the present value of all benefits expected to be accrued or earned under the plan during the plan year, as determined in accordance with § 1.430(d)-1 but using the additional actuarial assumptions described in paragraph (c)(3) of this section.

(ii) *Loading factor.* The at-risk target normal cost is increased by a loading factor equal to 4 percent of the target normal cost determined without regard to section 430(i) and this section.

(iii) *Minimum amount.* The at-risk target normal cost of a plan for a plan year is not less than the plan's target

normal cost determined without regard to section 430(i) and this section.

(e) *Transition between applicable funding targets and applicable target normal costs—(1) Funding target.* If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's funding target for the plan year is determined as the sum of—

(i) The funding target determined without regard to this section; plus

(ii) The phase-in percentage for the plan year multiplied by the excess of—

(A) The at-risk funding target determined under paragraph (c)(2) of this section (determined taking into account paragraph (e)(4) of this section); over

(B) The funding target determined without regard to this section.

(2) *Target normal cost.* If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's target normal cost for the plan year is determined as the sum of—

(i) The target normal cost determined without regard to section 430(i) and this section; plus—

(ii) The phase-in percentage for the plan year multiplied by the excess of—

(A) The at-risk target normal cost determined under paragraph (d)(2) of this section (determined taking into account paragraph (e)(4) of this section); over

(B) The target normal cost determined without regard to section 430(i) and this section.

(3) *Phase-in percentage.* For purposes of this paragraph (e), the phase-in percentage is 20 percent multiplied by the number of consecutive plan years that the plan has been in at-risk status (including the current plan year).

(4) *Transition funding target and target normal cost determined without load.* Notwithstanding paragraph (c)(2)(ii) of this section, if a plan has not been in at-risk status for 2 of the last 4 plan years, the plan's at-risk funding target that is used for purposes of paragraph (e)(1)(ii)(A) (to calculate the plan's funding target where the plan has been in at-risk status for fewer than 5 plan years) is determined without regard to the load set forth in paragraph (c)(2)(ii) of this section. Similarly, if a plan has not been in at-risk status for 2 of the last 4 plan years, the plan's at-risk target normal cost that is used for purposes of paragraph (e)(2)(ii)(A) (to calculate the plan's target normal cost where the plan has been in at-risk status for fewer than 5 plan years) is determined without regard to the load set forth in paragraph (d)(2)(ii) of this section.

(f) *Effective/applicability dates and transition rules—(1) In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year to which section 430 applies.

(4) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before the first day of the first effective plan year. Thus, except for plans with a delayed effective date under paragraph (f)(2) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(5) *Transition rule for determining funding target attainment percentage for the plan's pre-effective date plan year—(i) In general.* In the case of the plan's first effective plan year, the funding target attainment percentage for the plan's pre-effective plan year is determined as the fraction (expressed as a percentage), the numerator of which is the plan assets determined under paragraph (f)(5)(ii) of this section, and the denominator of which is the plan's current liability determined pursuant to section 412(l)(7) on the valuation date for the plan's pre-effective plan year.

(ii) *General determination of value of net plan assets—(A) In general.* The value of net plan assets for purposes of this paragraph (f)(5)(ii) is determined under section 412(c)(2) as in effect for the plan's pre-effective plan year, except that the value of plan assets prior to subtracting the plan's funding standard account credit balance described in paragraph (f)(5)(ii)(B) of this section can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year. If the value of plan assets determined under this paragraph (f)(5)(ii) is less than 90 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this

paragraph (f)(5)(ii) is equal to 90 percent of the fair market value of plan assets. If the value of plan assets determined under this paragraph (f)(5)(ii) is greater than 110 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (f)(5)(ii) is equal to 110 percent of the fair market value of plan assets.

(B) *Subtraction of credit balance.* If a plan has a funding standard account credit balance as of the valuation date for the plan's pre-effective plan year, that balance is subtracted from the net asset value described in paragraph (f)(5)(ii)(A) of this section as of that valuation date.

(C) *Effect of funding standard carryover balance reduction for first effective plan year.* Notwithstanding paragraph (f)(5)(ii)(B) of this section, if, for the first effective plan year, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with § 1.430(f)-1(e), then the present value (determined as of the valuation date for the pre-effective plan year using the valuation interest rate for that pre-effective plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (f)(5)(ii)(B) of this section.

(6) *Transition rule for determining at-risk status.* In the case of plan years beginning in 2008, 2009, and 2010, paragraph (b)(1)(i) of this section is applied by substituting the following percentages for "80 percent"—

- (i) 65 percent in the case of 2008;
- (ii) 70 percent in the case of 2009; and
- (iii) 75 percent in the case of 2010.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7-25125 Filed 12-28-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-111583-07]

RIN 1545-BG50

Employment Tax Adjustments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to regulations relating to employment tax adjustments and employment tax refund claims. These proposed amendments modify the process for making interest-free adjustments for both underpayments and overpayments of Federal Insurance Contributions Act (FICA) and Railroad Retirement Tax Act (RRTA) taxes and Federal income tax withholding (ITW) under sections 6205(a) and 6413(a), respectively, of the Internal Revenue Code (Code). These proposed amendments also modify the process for filing claims for refund of overpayments of employment taxes under sections 6402 and 6414.

These amendments are proposed in connection with the IRS's development of new forms to report adjustments to employment taxes which will replace the existing process of reporting adjustments of employment taxes on regularly filed employment tax returns. These proposed amendments affect taxpayers that file Form 941, "Employer's QUARTERLY Federal Tax Return," Form 943, "Employer's Annual Tax Return for Agricultural Employees," Form 944, "Employer's ANNUAL Federal Tax Return," Form 945, "Annual Return of Withheld Federal Income Tax," and Form CT-1, "Employer's Annual Railroad Retirement Tax Return," and any related Spanish-language returns or returns for U.S. possessions.

This document contains proposed amendments to regulations relating to the return requirements under section 6011 to reflect the changes to the adjustment and refund processes, and to reflect additional statutory and process updates. This document also contains proposed amendments to the regulations under section 6302 to clarify deposit obligations with respect to interest-free adjustments of underpayments and the effect of adjustments and refunds on the deposit schedule of a Form 943 filer.

This document also provides notice of a public hearing on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by March 27, 2008. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for April 17, 2008, must be received by March 27, 2008.

Applicability Dates: See the Proposed Dates of Applicability section of the **SUPPLEMENTARY INFORMATION.**

Effective Date: See the Proposed Effective Date section of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-111583-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-111583-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-111583-07). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, please contact Ligeia M. Donis of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622-0047; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, please contact Richard Hurst at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§ 31.6011(a)-1, 31.6011(a)-4,

31.6011(a)–5, 31.6205–1, 31.6402(a)–2, 31.6413(a)–1, 31.6413(a)–2, and 31.6414–1. This information is required by the IRS to verify compliance with return requirements under section 6011, employment tax adjustments under sections 6205 and 6413, and claims for refund of overpayments of employment taxes under sections 6402 and 6414. This information will be used to determine whether the amount of tax has been reported and calculated correctly. The likely respondents are employers.

Estimated total annual reporting and/or recordkeeping burden: 15,000,000 hours.

Estimated average annual burden per respondent: 10 hours.

Estimated number of respondents: 1,500,000.

Estimated annual frequency of responses: on occasion.

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

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

Background

These proposed regulations are part of the IRS's effort to reduce taxpayer burden by permitting employers to make employment tax adjustments on a separately filed form as soon as an error is ascertained, rather than as a line adjustment on the employer's regularly filed employment tax return.

These proposed regulations amend the Employment Tax Regulations (26 CFR part 31) under section 6011 relating to the requirement to file a return, under sections 6205(a) and 6413(a) relating to the process for making adjustments of underpayments and overpayments, respectively, of employment taxes, under section 6302 relating to deposit obligations, and under sections 6402 and 6414 relating to the process of filing a claim for refund for an overpayment of employment taxes. For purposes of these proposed amendments to the regulations, the term *employment taxes* means the Federal Insurance Contributions Act (FICA) tax (both the Social Security and Medicare portions) imposed on both the employer and the employee, the Railroad Retirement Tax Act (RRTA) tax imposed on both the employer and employee, and federal

income tax withholding (ITW). To the extent that other types of withholding are treated as ITW under section 3402(a) (that is, gambling withholding, pension withholding, and backup withholding as set forth in sections 3402(q)(7), 3405(f), and 3406(h)(10), respectively), these other types of withholding are included in the term "employment taxes".

Interest-Free Adjustments

Generally, the Internal Revenue Code (Code) requires that interest be paid to the IRS on any underpayment of tax and that interest be allowed and paid to the taxpayer on any overpayment of tax. See sections 6601(a) and 6611(a), respectively. An exception to the general rule, however, applies uniquely to employment taxes. Where an amount other than the correct amount of tax imposed by sections 3101 (employee FICA tax), 3111 (employer FICA tax), 3201 (employee RRTA tax), 3221 (employer RRTA tax), or 3402 (ITW) is reported to the IRS with respect to any payment of wages or compensation, sections 6205(a) and 6413(a) permit employers to make interest-free adjustments for underpayments and overpayments, respectively. Where the correct amount of tax has been reported but not paid, no adjustment to the amount is necessary; accordingly, the interest-free adjustment rules do not apply.

The legislative history of the predecessors to sections 6205 and 6413 indicates that the interest-free adjustment process was envisioned as a way to fix errors made in prior return periods as soon as they were discovered, without the need to go through more burdensome procedures. The adjustment process was designed to permit the employer to adjust, without interest, overpayments and underpayments of tax without the necessity in the former case of requiring the filing of a claim for refund and in the latter case of a notice and demand by the IRS for additional tax. Thus, the legislative history shows that Congress envisioned a process whereby the employer would correct prior errors, separate from the refund and notice and demand processes. Moreover, the legislative history indicates that Congress assumed that an overpayment adjustment would be accepted by the IRS only after the employer had returned to the employee any amount of previously overwithheld tax.

The existing regulations under section 6205(a) set forth the procedures for making interest-free adjustments for underpayments of employment taxes. They provide that if a return is filed and

less than the correct amount of employee or employer portions of FICA or RRTA tax is reported and paid, the employer shall adjust the underpayment (a) by reporting the additional amount due as an adjustment on a current return, or (b) by reporting such additional amount on a supplemental return. The IRS has not issued guidance or procedures for filing a supplemental return, other than indicating that the forms used to accept an assessment of employment taxes after an examination (that is, Form 2504, "Agreement and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)", and Form 2504–WC, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax)") constitute supplemental returns for purposes of permitting the assessment to be made without interest. See Rev. Rul. 75–464 (1975–2 CB 474). Accordingly, outside of the examination context, interest-free adjustments of employment tax are made on a current return. (See § 601.601(d)(2)(ii)(b)).

The reporting of an underpayment of FICA tax or RRTA tax constitutes an interest-free adjustment when the underpayment is reported on a current return only if the current return is filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. If the amount of the underpayment is paid to the IRS by the due date for reporting the adjustment, it is paid without interest. However, if the underpayment is reported but the amount is not paid when due, interest begins to accrue from the due date for reporting the adjustment. The rules are the same for adjusting underpayments of ITW when less than the correct amount has been withheld, except that adjustments on the current return can only be made on a return for a return period in the same calendar year in which the wages or compensation is paid. Although the regulations do not address it, the relevant forms and instructions permit employers to adjust administrative errors involving ITW, that is, errors involving the inaccurate reporting of the amount withheld, and errors discovered as part of an examination for previous calendar years.

The existing regulations provide that an interest-free adjustment for an underpayment may not be made after a taxpayer has received notice and

demand from the IRS for payment of the amount based on an assessment or after a taxpayer has received a Notice of Determination of Worker Classification.

An underpayment adjustment may only be made within the period of limitations for assessment under section 6501(a) (generally 3 years from the date the original return is filed). Section 6501(b)(2) provides that, for purposes of section 6501, employment tax returns reporting FICA tax or ITW for any return period ending with or within a calendar year filed before April 15 of the succeeding calendar year will be deemed filed on April 15 of such succeeding calendar year.

The regulations also provide that where an employer fails to collect the correct amount of employee tax (either the employee share of FICA tax, the employee share of RRTA tax) or ITW with respect to wages or compensation paid during a given return period and discovers that error before it files the return for such return period, the employer is still required to report and pay the correct amount on a timely basis. If the employer fails to report and pay the correct amount, any subsequent correction of that error will not qualify as an interest-free adjustment. However, if the employer files a FICA tax return and should have filed a RRTA tax return, or vice versa, and reports and pays less than the correct amount of tax, an interest-free adjustment may be made by filing the correct type of return for each return period and reporting the additional amount of tax.

The existing regulations under section 6413(a) set forth the procedures for making interest-free adjustments for overpayments of employment taxes. They provide that, if an employer ascertains an overpayment error within the applicable period of limitations on credit or refund, the employer is required to repay or reimburse its employees the amount of overcollected employee FICA tax or employee RRTA tax prior to the due date of the return for the return period after the return period in which the error was ascertained and prior to the expiration of the applicable period of limitations. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. An employer "reimburses" an employee by applying the overwithheld amount against taxes to be withheld on future wages. The employer must retain appropriate records to reflect that the employee has been repaid or reimbursed and that the employee has not filed a claim for refund of such tax or that any filed claim has been rejected.

The applicable period of limitations is set forth in section 6511 and is generally 3 years from the date the original return was filed or 2 years from the date the tax was paid, whichever is later. Section 6513(c)(1) provides that, for purposes of section 6511, employment tax returns reporting FICA tax or ITW for any return period ending with or within a calendar year filed before April 15 of the succeeding calendar year will be deemed filed on April 15 of such succeeding calendar year. Section 6513(c)(2) provides that if FICA tax or ITW with respect to remuneration or other amount paid during any return period ending with or within a calendar year is paid before April 15 of the succeeding calendar, for purposes of section 6511 such tax will be deemed paid on April 15 of such succeeding calendar year.

Once an employer repays or reimburses an employee, the employer may report both the employee and employer portions of FICA or RRTA tax as an overpayment on a current return. The reporting of the overpayment constitutes an interest-free adjustment if the overpayment is reported on a current return filed on or before the last day on which the return is required to be filed for the return period following the return period in which the error was ascertained. Because of the requirement to repay or reimburse employees, employers are given an extra return period in which to repay or reimburse their employees and make the adjustment. Similar rules apply for making interest-free adjustments for overpayments of ITW, except that an interest-free adjustment may only be made if the employer ascertains the error and repays or reimburses its employees within the same calendar year that the wages were paid and reports the adjustment on a return for such calendar year. For example, if an employer who is a Form 941 filer discovers an overpayment of ITW on December 15, 2009 for wages paid in June 2009, the employer must repay or reimburse its employees by December 31, 2009 and must report the adjustment on the fourth quarter 2009 Form 941.

An overpayment adjustment under section 6413(a) must be made within the period of limitations for credit or refund of the overpayment, as set forth in section 6511 and described above. The adjustment may be limited in amount under section 6511(b)(2) as described above. An interest-free adjustment for an overpayment may not be made once a claim for refund has been filed.

Currently, an interest-free adjustment, whether for an underpayment or an overpayment, is made by entering the

amount as a line adjustment on a current return and including the amount in calculating the current return period's liability on the return. The current return period adjustment can be made on Form 941, "Employer's QUARTERLY Federal Tax Return," Form 943, "Employer's Annual Tax Return for Agricultural Employees," Form 944, "Employer's ANNUAL Federal Tax Return," Form 945, "Annual Return of Withheld Federal Income Tax," or Form CT-1, "Employer's Annual Railroad Retirement Tax Return," and on any related Spanish-language returns or returns for U.S. possessions. The return on which the underpayment or overpayment adjustment is entered must include an attached statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations and by the instructions relating to the return. Form 941c, "Supporting Statement to Correct Information," qualifies as such attached statement and includes the necessary certifications to establish that the employer has satisfied the requirements to repay or reimburse its employee for overpayment adjustments and to obtain statements that the employee has not filed a claim for refund or that the claim has been rejected.

Claims for Refund

For overpayments of employment taxes, section 6413(b) permits the filing of a claim for refund when an interest-free adjustment cannot be made. The existing regulations under section 6413(a) provide that an adjustment cannot be made after a claim for refund is filed. Under the regulatory authority in section 6413(b), the IRS has permitted taxpayers to choose between filing a claim for refund pursuant to section 6402(a) and making an interest-free adjustment pursuant to section 6413(a) to correct an overpayment of employment taxes. The preamble to Treasury decision 6472 (1960-2 CB 351), which promulgated the existing regulations, indicated an intent to make the overpayment adjustment process permissive. An extensive evaluation of these regulations in the late 1970's confirmed the optional nature of the overpayment adjustment process, and is reflected in Rev. Rul. 81-310 (1981-2 CB 241). (See § 601.601(d)(2)(ii)(b)).

Under section 6402(a), the IRS, within the applicable period of limitations on credit or refund, may credit the amount of an overpayment, including any interest, against any tax liability of the person who made the overpayment and

shall, subject to certain offsets, refund any balance to such person. A claim for refund under section 6402(a) must be filed within the period of limitations on credit or refund as set forth in section 6511. Such refund may be limited in amount pursuant to section 6513(c)(2). Claims for refund are not granted automatically and the IRS is not required to act on the refund claim. Section 6532(a) provides that a taxpayer cannot file a suit for refund before the expiration of 6 months from the date of filing a claim for refund unless the IRS renders a decision on the claim within that time. The taxpayer must file suit within 2 years of the date the claim was disallowed.

The existing regulations under section 6402(a) set out the procedures for filing a claim for refund of overpaid FICA and RRTA taxes. The regulations permit an employer to file a claim for refund for an overpayment of FICA or RRTA tax, but require the employer to include a statement that the employer has repaid the employee's share of FICA or RRTA tax to the employee or has secured the written consent of the employee to allowance of the refund or credit. The employer must retain appropriate records reflecting that it has repaid its employee or obtained the employee's consent and that the employee has not filed a claim for refund of such tax or that any filed claim has been rejected.

Section 6414 permits refunds of ITW only to the extent the amount of the ITW overpayment was not actually deducted and withheld from an employee. The existing regulations under section 6414 set out the procedures for filing a claim for refund of overpaid ITW and are similar to the procedures for filing a claim for refund of overpaid FICA or RRTA tax, except that an employer may not file a claim for an overpayment of ITW for an amount the employer deducted or withheld from an employee.

An employer makes a claim for refund by filing Form 843, "Claim for Refund and Request for Abatement", with a Form 941c attached (or an equivalent statement). Form 941c includes the amounts to be refunded and the necessary certifications to establish that the employer has repaid the employee or obtained the employee's consent to filing the claim for refund, and has obtained a statement that the employee has not filed a claim for refund or that the claim has been rejected.

Reason for Amendments

The current process for adjusting underpayments or overpayments of employment taxes raises a number of issues both for employers and the IRS,

primarily because the current process requires employers to make adjustments to past return periods in connection with the filing of their current returns. The IRS believes it will reduce the burden for taxpayers, as well as improve tax administration, if the adjustment process for employment tax returns is revised by creating a separate "adjusted return" to make adjustments to past return periods that can be filed independently of a return for any other return period.

Explanation of Provisions

Adjusted Return Replaces Current Return Process

The proposed amendments change the process by which employers can make interest-free adjustments to correct underpayments or overpayments of employment tax. The proposed amendments to the regulations eliminate the existing process that uses the current return to make adjustments and replace it with a new process which will use a separately filed adjusted return to make adjustments. Unlike Form 941c, the new adjusted return will not be filed as an attachment to a current return and will not affect the liability reported on the current return.

The proposed amendments to the regulations also eliminate any reference to the use of supplemental returns to make adjustments. The proposed amendments provide that Forms 2504 and 2504-WC will be treated as adjusted returns under the same rationale and criteria that they have been treated as supplemental returns under Rev. Rul. 75-464. Thus, corrections reported on these forms following an examination will continue to be eligible for interest-free adjustment treatment. See § 601.601(d)(2)(ii)(b).

The proposed amendments to the regulations do not affect the existing rules on correcting undercollections of employee tax (either the employee share of FICA or RRTA tax), or ITW when an employer discovers the error during the return period in which the undercollection occurred. In such case, the employer must report and pay the correct amount on a timely basis as if the correct amount of tax had been collected. If the employer fails to report and pay the correct amount, any subsequent correction of that error will not be an interest-free adjustment.

Time for Filing Adjusted Return

An employer may file an adjusted return correcting an underpayment or an overpayment as soon as the employer ascertains the underpayment or overpayment error, rather than waiting

to report the adjustment with the regularly filed employment tax return. The adjusted return for an underpayment may only be filed within the applicable period of limitations for assessing the underpayment, and the adjusted return for an overpayment may only be filed before the 90th day prior to the expiration of the applicable period of limitations on credit or refund. If the original return reporting FICA tax or ITW for the return period in which the wages were paid was timely filed and the taxes were timely paid, the limitations period for both assessment and credit or refund begins to run on April 15 of the year following the year in which the wages were paid and ends three years after that. Thus, for example, if wages are paid on June 6, 2009, and an original employment tax return reporting those wages is filed July 31, 2009 and the reported taxes are timely paid, the period of limitations for assessment or for credit or refund would expire April 15, 2013. An adjusted return reporting an underpayment must be filed by April 15, 2013. An adjusted return reporting an overpayment must be filed by January 15, 2013, the date which is 90 days before the expiration of the period of limitations on credit or refund. A claim for refund for the same overpayment will be timely if filed by April 15, 2013.

The proposed amendments to the regulations provide that an adjustment will be interest-free only if it is reported on an adjusted return within a certain amount of time after it is discovered. Specifically, the adjusted return reporting an underpayment must be filed by the due date of the return for the return period in which the error is ascertained; the amount of the underpayment must be paid by the time the adjusted return is filed, or interest will begin to accrue from the date the adjusted return is filed. In addition, subject to limited exceptions, for underpayments of ITW where the incorrect amount was withheld, an adjusted return may be filed only for errors ascertained during the calendar year in which the wages were paid and must be filed by the due date of the return for the return period in which the error is ascertained. In addition, for overpayments of ITW where the incorrect amount was withheld, the adjusted return may be filed only for errors ascertained during the calendar year in which the wages were paid, the employer must repay or reimburse the employees within the same calendar year that the wages were paid, and the adjusted return must be filed by the due date of the return for the return period

following the return period in which the error is ascertained.

Treatment as Interest-Free Adjustment Where Original Return Never Filed

The proposed amendments to the regulations also provide that interest-free adjustments for underpayments of FICA tax, RRTA tax, and ITW are available under certain circumstances where the underpayment arises because the employer failed to file an original return. As in the existing regulations, an interest-free adjustment is available if an employer filed a FICA tax return when a RRTA tax return should have been filed, or vice versa. In addition, interest-free adjustment treatment is generally available if an employer failed to file a return for a return period solely because the employer failed to treat any individuals as employees. The latter interest-free adjustment provision was originally proposed in 1992 (EE-12-92, 57 FR 58423) and is being re-proposed as part of these proposed amendments to the regulations. The proposed regulations in EE-12-92 will be withdrawn once these proposed amendments to the regulations are finalized.

To constitute an interest-free adjustment in these circumstances, the employer must file an original return of the correct type for each return period for which the employer failed to file the correct return and report on the return the additional amount of tax. Generally, such reporting will constitute an interest-free adjustment if the return is filed by the due date of the return for the return period in which the error is ascertained. The amount reported must be paid by the time the original return is filed or interest will accrue from that date.

Repayment or Reimbursement of Employees Required for Interest-Free Adjustments of Overpayments

When an overpayment error is ascertained, the proposed amendments to the regulations retain the rule that the employer must repay or reimburse the employee's share of FICA or RRTA tax before making the overpayment adjustment of both the employees' and employer's taxes. Such repayment or reimbursement must occur by the due date of the return for the return period following the return period in which the error is ascertained and within the applicable period of limitations on credit or refund. However, the requirement to repay or reimburse does not apply to the extent that taxes were not withheld from the employee or if, after reasonable efforts, the employer cannot locate the employee; in such

case, the employer may make an adjustment for only the employer share of FICA or RRTA tax. The adjusted return reporting the overpayment may only be filed once the employer has repaid or reimbursed its employees to the extent required. The employer must certify on the adjusted return that it has repaid or reimbursed its employees to the extent required. Because repayment or reimbursement of overwithheld ITW must be made within the same calendar year, and annual Forms 943, 944, and 945 are normally filed after the close of the calendar year, there can be no repayment or reimbursement of ITW after filing such annual returns. Thus, no overpayment adjustments of ITW can generally be made for such returns, except for administrative errors, that is, errors involving the inaccurate reporting of the amount actually withheld. Note that in the case of backup withholding reported on Form 945, repayment of erroneous withholding is not required and is permitted only in certain circumstances. See § 31.6413(a)-3.

Deposits, Payments, and Credits

The proposed amendments to the regulations under section 6302 provide that an employer making an interest-free adjustment must pay the amount of the adjustment by the time it files an adjusted return; such timely payment will satisfy the employer's deposit obligations with respect to the adjustment. In addition, the proposed amendments to the regulations governing agricultural employers (Form 943 filers) provide that for purposes of determining the amount of accumulated taxes in the employer's lookback period (which determines the employer's deposit schedule), adjustments to tax liability made pursuant to the filing of adjusted returns or claims for refund will not be taken into account. This rule is consistent with the rule already in effect with respect to Form 941 and Form 944 filers that adjustments to prior return periods are not taken into account in determining the employment tax liability for such prior return period. See § 31.6302-1T(b)(4).

For interest-free adjustments of underpayments, the amount must be paid when the adjusted return is filed. If the amount is not paid when the adjusted return is filed, interest will begin to accrue as of the date the adjusted return is filed.

Consistent with the legislative history of section 6413, the adjusted overpayment amount will be applied as a credit toward payment of the employer's liability for the calendar quarter (or calendar year for annual returns being adjusted) in which the

adjusted return is filed, unless the IRS notifies the employer that the credit will be applied to a different return period or that the employer is not entitled to the adjustment under applicable laws or procedures.

Refunds for Overpayments

As in the existing regulations, in lieu of making an interest-free adjustment for an overpayment, employers may file a claim for refund pursuant to section 6402 or 6414 for the amount of the overpayment. Furthermore, if an employer cannot make an interest-free adjustment with respect to an overpayment because the period of limitations for claiming a credit or refund for such overpayment will expire within 90 days or because the IRS has otherwise notified the employer that it is not entitled to the adjustment, the employer may recover the overpayment only by filing a claim for refund. The proposed amendments to the regulations under section 6414 continue to provide that an employer can only file a claim for refund for ITW that was not withheld from the employee. Prior to filing a claim for refund under section 6402 for FICA or RRTA tax, employers must either repay or reimburse the employees or obtain the employees' consents to the allowance of the refund, except to the extent that the overpayment does not include taxes withheld from the employee or, after reasonable efforts, the employer cannot locate the employee or the employee will not provide the requested consent. The employer must certify that it has either repaid or reimbursed the employee or obtained the employee's consent to the extent required.

Under the proposed amendments to the regulations, employers will file the prescribed form to claim a refund. However, Form 941c will no longer be used as an attachment to a claim for refund.

Tax Returns or Statements

This notice of proposed rulemaking also proposes amendments to the regulations for reporting employment taxes under section 6011 to reflect the changes to the adjustment and refund processes. In particular, the proposed amendments remove references to Form 941c from the regulations under section 6011 because Form 941c will no longer be used. The proposed amendments also remove references to other obsolete tax returns, add references to current tax returns in use, and make minor stylistic changes to the text of the regulations.

The proposed amendments also update the section 6011 regulations to conform to current law due to the

enactment of section 3510, added to the Code by section 2(b)(1) of the Social Security Domestic Employment Reform Act of 1994 (Public Law 103-387), which mandates annual returns for domestic service employment taxes, and to reflect current procedures. Schedule H (Form 1040), rather than Form 942, is the prescribed form for reporting wages for domestic service in a private home paid in calendar years beginning after December 31, 1994. If an employer is required to file Form 941, Form 943, or Form 944, the employer may choose to report wages with respect to domestic workers on Form 941, Form 943, or Form 944, instead of reporting such wages on Schedule H (Form 1040).

Proposed Effective Date

The amendments to the regulations as proposed will be effective on the date they are published as final regulations in the **Federal Register**.

Proposed Dates of Applicability

With respect to the regulations under Code sections 6205, 6302, 6402, 6413, and 6414, the regulations, as proposed, apply to any error ascertained on or after January 1, 2009.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Because the regulations under section 6302 do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

The proposed amendments to the regulations under section 6011, 6205, 6402, 6413, and 6414 affect all taxpayers that file employment tax returns. Therefore, the IRS has determined that these proposed amendments will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the proposed amendments to the regulations will not be significant. The proposed amendments to the regulations require taxpayers who file employment tax returns and who make interest-free adjustments to their employment taxes for either underpayments or overpayments or who file claims for refund for an overpayment of employment tax to provide an explanation setting forth the basis for the correction or the claim in

detail, designating the return period in which the error was ascertained and the return period being corrected, and setting forth such other information as may be required by the instructions to the form. In addition, for adjustments of overpayments and for claims for refund, taxpayers must also obtain and retain the written receipt of the employee showing the date and amount of the repayment, or the written consent of the employee. For purposes of overpayment adjustments and claims for refund of employee FICA and RRTA tax overcollected in an earlier year, the employer must also obtain and retain the written statement from the employee providing that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

This collection of information is not new to the proposed regulations and has been in existence since the 1960s, when the existing regulations were promulgated. In addition, the proposed amendments to the regulations are being made in conjunction with a project of the Office of Taxpayer Burden Reduction which seeks to revise the process for making corrections to employment tax returns to make it less burdensome to taxpayers. The filing of a claim for refund and the making of an interest-free adjustment pursuant to both the existing and proposed regulations are voluntary on the part of taxpayers.

Based on these facts, the IRS hereby certifies that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for April 17,

2008, at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by March 27, 2008.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. Section 31.6011(a)–1 is amended by revising paragraphs (a)(2), (a)(3), (a)(4) and (c) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) * * *

(2) *Employers of agricultural workers.* Every employer who pays wages for agricultural labor with respect to taxes imposed by the Federal Insurance Contributions Act must make a return for the first calendar year in which the employer pays such wages and for each subsequent calendar year (whether or not wages are paid) until the employer has filed a final return in accordance with § 31.6011(a)–6. Form 943, “Employer’s Annual Federal Tax Return for Agricultural Employees,” is the form prescribed for making the annual return required by this section, except that, if the employer’s principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico, the return must be made on Form 943–PR, “Planilla para la Declaración ANUAL de la Contribución Federal del Patrono de Empleados Agrícolas.”

(3) *Employers of domestic workers.* Schedule H (Form 1040), “Household Employment Taxes,” is the form prescribed for use by every employer in making a return as required under paragraph (a)(1) of this section in respect of wages, as defined in the Federal Insurance Contributions Act, paid by the employer in any calendar year for domestic service as defined in section 3510. Schedule H (Form 1040) is generally filed as an attachment to an income tax return, however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H (Form 1040) may be filed as a separate return. If, however, the employer is required under paragraph (a)(1) of this section to make a return on Form 941, “Employer’s QUARTERLY Federal Tax Return,” or under paragraph (a)(2) of this section to make a return on Form 943, “Employer’s Annual Federal Tax Return For Agricultural Employees,” or under paragraph (a)(5) of this section to make a return on Form 944, “Employer’s ANNUAL Federal Tax Return,” the employer may choose instead to report wages with respect to domestic workers on such Form 941, Form 943 or Form 944. If such wages are included on Form 941, Form 943 or Form 944, the employer must also include Federal unemployment tax for the employee(s) on Form 940, “Employer’s Annual Federal Unemployment (FUTA) Tax Return,” under the provisions of § 31.6011(a)–3.

(4) *Employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern*

Mariana Islands. Form 941–PR, “Planilla para la Declaración Federal TRIMESTRAL del Patrono,” (or Form 944–PR, “Planilla para la Declaración Federal ANUAL del Patrono,” if the IRS notified the employer that the Form 944–PR must be filed in lieu of Form 941–PR) is the form prescribed for use in making the return required under paragraph (a)(1) (or (a)(5)) of this section in the case of every employer whose principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico. Form 941–SS, “Employer’s QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands),” (or Form 944–SS, “Employer’s ANNUAL Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands),” if the IRS notified the employer that Form 944–SS must be filed in lieu of Form 941–SS) is the form prescribed for use in making the return required under paragraph (a)(1) (or (a)(5)) of this section in the case of every employer whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or if the employer has employees who are subject to income tax withholding for these U.S. possessions. However, Form 941 (or Form 944 if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making such return in the case of every such employer who is required pursuant to § 31.6011(a)–4 to make a return of income tax withheld from wages.

* * * * *

(c) *Adjustments and refunds.* For rules applicable to adjustments and refunds of employment taxes, see sections 6205, 6402, 6413, and 6414, and the applicable regulations.

* * * * *

Par. 3. Section 31.6011(a)–4 is amended by revising paragraph (a)(2) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) * * *

(2) *Wages paid for domestic service.* Schedule H (Form 1040), “Household Employment Taxes,” is the form prescribed for making the return required under paragraph (a)(1) of this section with respect to income tax withheld, pursuant to an agreement under section 3402(p), from wages paid for domestic service in a private home of the employer. Schedule H (Form

1040) is generally filed as an attachment to an income tax return; however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H (Form 1040) may be filed as a separate return. The preceding sentence shall not apply in the case of an employer who has chosen under § 31.6011(a)–1(a)(3) to use Form 941, “Employer’s QUARTERLY Federal Tax Return,” Form 943, “Employer’s Annual Tax Return for Agricultural Employees,” or Form 944, “Employer’s ANNUAL Federal Tax Return,” as the return with respect to such payments for purposes of the Federal Insurance Contributions Act. For the requirements relating for Schedule H (Form 1040) with respect to qualified State individual income taxes, see § 301.6361–1(d)(3)(iv) of this chapter.

* * * * *

Par. 4. Section 31.6011(a)–5 is amended by revising paragraph (a) to read as follows:

§ 31.6011(a)–5 Monthly returns.

(a) *In general*—(1) *Requirement.* The provisions of this section are applicable in respect of the taxes reportable on returns required pursuant to § 31.6011(a)–1 or § 31.6011(a)–4. An employer (or other person) who is required by § 31.6011(a)–1 or § 31.6011(a)–4 to make quarterly or annual returns on any such form shall, in lieu of making such quarterly or annual returns, make returns of such taxes in accordance with the provisions of this section if the employer is so notified in writing by the IRS. Every employer (or other person) notified by the IRS shall make a return for the calendar month in which the notice is received, for each of the prior calendar months in the return period, and for each calendar month afterwards (whether or not wages are paid in any such month) until the employer has filed a final return or is required to make quarterly or annual returns pursuant to notification as provided in paragraph (a)(2) of this section. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer (or other person) under the provisions of § 31.6011(a)–1 or § 31.6011(a)–4, except that, if some other form is furnished by the IRS for use in lieu of such prescribed form, the return shall be made on such other prescribed form. The IRS may notify any employer (or other person)—

(i) Who by reason of notification as provided in § 301.7512–1 of this chapter (Regulations on Procedure and Administration), is required to comply

with the provisions of such § 301.7512–1; or

(ii) Who failed to—

(A) Make any return required pursuant to § 31.6011(a)–1 or § 31.6011(a)–4;

(B) Pay tax reportable on any such form; or

(C) Deposit any such tax as required under the provisions of § 31.6302(c)–1.

(2) *Termination of requirement.* The IRS, in its discretion, may notify the employer in writing that the employer shall discontinue the filing of monthly returns under this section. If the employer is so notified, the IRS will provide the employer with instructions for filing the final monthly return. Afterwards, the employer shall make quarterly or annual returns in accordance with the provisions of § 31.6011(a)–1 or § 31.6011(a)–4.

* * * * *

Par. 5. Section 31.6205–1 is amended to read as follows:

§ 31.6205–1 Adjustments of underpayments.

(a) *In general.* (1) An employer who has undercollected or underpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax Act (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) No correction will be eligible for interest-free adjustment treatment if the failure to report relates to an issue that was raised in an examination of a prior return period or if the employer knowingly underreported its employment tax liability.

(3) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the prescribed form that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(4) Every adjusted return on which an underpayment is corrected pursuant to this section shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by the

regulations in this section and by the instructions relating to the form.

(5) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(6) No correction will be eligible for interest-free adjustment treatment pursuant to this section after the earlier of the following:

(i) Receipt from the IRS of notice and demand for payment thereof based upon an assessment.

(ii) Receipt from the IRS of a Notice of Determination of Worker Classification (Notice of Determination) in connection with such underpayment. Prior to receipt of a Notice of Determination, the taxpayer may, in lieu of making a payment, make a cash bond deposit that would have the effect of stopping the accrual of any interest, but would not deprive the taxpayer of its right to receive a Notice of Determination and to petition the Tax Court under section 7436.

(7) Subject to the exceptions specified in paragraphs (a)(2) and (a)(6) of this section, Form 2504, “Agreement and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax),” and Form 2504–WC, “Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax),” constitute adjusted returns for purposes of this section.

(8) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–1 of this chapter. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–2 of this chapter.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act—*

(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of employee tax. If the employer does not report and pay the correct amount of tax on a timely basis in these circumstances, the employer

may not later correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* (i) If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of employee or employer FICA or RRTA tax with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the form. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed within the period of limitations for assessment for the return period being corrected, and by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(ii) If an employer files a return reporting FICA tax for a return period although the employer was required to file a return reporting RRTA tax, or vice versa, and reports on the return less than the correct amount that should have been reported on the return required to be filed, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an original return for the correct tax for the return period for which the incorrect return was filed, accompanied by a detailed explanation of the amount being reported on the original return and any other information as may be required by the regulations in this section and by the instructions relating to the form. The reporting of the additional amount for

the period constitutes an adjustment within the meaning of this section only if the return is filed by the due date of the return for reporting the correct tax for the return period in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any employer or employee FICA or RRTA tax with respect to wages or compensation paid to the employees), and if the employer ascertains the error after the due date of the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the amount due on an original return for the return period for which the employer failed to file a return, accompanied by a detailed explanation of the amount being reported on the original return and any other information as may be required by this section and by the instructions relating to the form. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the return is filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(c) *Income tax required to be withheld from wages—(1) Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of income tax required to be withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which the withheld tax is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of tax required to be withheld. If the employer does not report and pay the correct amount of tax on a timely basis in these

circumstances, the employer may not correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* If an employer files a return on which income tax required to be withheld from wages is required to be reported and reports on the return less than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the form. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid, unless the underpayment is attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount actually withheld, or the adjustment is reported on a Form 2504 or Form 2504-WC. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any income tax required to be withheld from wages), the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the correct amount on an original return for the return period for which the employer failed to file a

return and pay the tax to the IRS. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the return is filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid or section 3509 applies to determine the amount of the underpayment. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(d) *Deductions from employee—(1) Federal Insurance Contributions Tax Act and Railroad Retirement Tax Act.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, the employer must collect the amount of the undercollection by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The correct amount of an undercollection of employee tax from an employee must be reported and paid, as provided in paragraph (b) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(1), and even if the deduction is made after the return on which the employee tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If an employer makes an erroneous collection of employee tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see § 31.3102-1(d). This paragraph (d)(1) does not apply if

section 3509 applies to determine the employer's liability.

(2) *Income tax required to be withheld from wages.* If an employer collects less than the correct amount of income tax required to be withheld from wages during a calendar year, the employer must collect the amount of the undercollection on or before the last day of the year by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. The correct amount of an undercollection of income tax from an employee must be reported and paid, as provided in paragraph (c) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(2), and even if the deduction is made after the return on which the tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer within the calendar year. If an employer makes an erroneous collection of income tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of income tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see § 31.3403–1. For provisions relating to the employer's liability for an underpayment of tax unless the employer can show that the income tax against which the tax under section 3402 may be credited has been paid, see § 31.3402(d)–1. This paragraph (d)(2) does not apply if section 3509 applies to determine the employer's liability.

Par. 6. Section 31.6302–0 is amended by adding a new entry for § 31.6302–1(c)(7) to read as follows:

§ 31.6302–0 Table of contents.

* * * * *

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(c) * * *

(7) *Exception to the monthly and semi-weekly deposit rules for employers making interest-free adjustments.*

* * * * *

Par. 7. Section 31.6302–1 is amended by adding paragraph (c)(7) and revising paragraph (g)(4) to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(c) * * *

(7) *Exception to the monthly and semi-weekly deposit rules for employers making interest-free adjustments.* An employer filing an adjusted return under § 31.6205–1 to report taxes that were accumulated in a prior return period shall pay the amount of the adjustment by the time it files the adjusted return, and the amount timely paid will be deemed to have been timely deposited by the employer. The payment may accompany the adjusted return, be made by electronic funds transfer, or be made by other methods of payment as provided by the instructions relating to the adjusted return.

* * * * *

(g) * * *

(4) *Lookback period.* The tax liability shown on the original return for the return period is the amount taken into account in determining whether the accumulated taxes for the lookback period exceed \$50,000. The employer does not take into account any adjustments to tax liability made pursuant to the filing of adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413 and 6414 filed after the due date of the original return when determining accumulated taxes for the lookback period.

* * * * *

Par. 8. Section 31.6402(a)–1 is amended by revising paragraph (a) to read as follows:

§ 31.6402(a)–1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§ 31.6402(a)–2, 31.6402(a)–3, and 31.6414–1. For regulations under section 6402 of general application to credits or refunds, see §§ 301.6402–1 and 301.6402–2 of this chapter (Regulations on Procedure and Administration). For provisions relating to adjustments without interest of overpayments of taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act or income tax withholding, see §§ 31.6413(a)–1 and 31.6413(a)–2.

* * * * *

Par. 9. Section 31.6402(a)–2 is amended by revising paragraph (a) and

removing paragraph (c) to read as follows:

§ 31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to IRS—(1) In general.* (i) Any person may file a claim for credit or refund for an overpayment (except to the extent that the overpayment must be credited pursuant to § 31.3503–1) if the person paid to the IRS more than the correct amount of employee tax under section 3101 or employer tax under section 3111 of the Federal Insurance Contributions Act (FICA), employee tax under section 3201, employee representative tax under section 3211, or employer tax under section 3221 of the Railroad Retirement Tax Act (RRTA), or interest, addition to the tax, additional amount, or penalty with respect to any such tax.

(ii) The claim for credit or refund must be made in the manner and subject to the conditions stated in this section. The claim for credit or refund must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by this section and by the instructions relating to the form used to make such claim. No refund or credit pursuant to this section for employer tax will be allowed unless the employer has first repaid or reimbursed its employee or has secured the employee's consent to the allowance of the claim for refund and includes a claim for the refund of such employee tax. However, this requirement does not apply to the extent that the taxes were not withheld from the employee or, after the employer makes reasonable efforts to repay or reimburse the employee or secure the employee's consent, the employer cannot locate the employee or the employee will not provide consent. No refund or credit of employee FICA or RRTA tax overcollected in an earlier year will be allowed if the employee has claimed a refund or credit of the amount of the overcollection which has not been rejected or if the employee has taken the amount of such tax into account in claiming a credit against or refund of the employee's income tax, including instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see § 31.6413(c)–1).

(iii) For adjustments without interest of overpayments of taxes under the FICA or the RRTA, see § 31.6413(a)–2.

(iv) For provisions related to furnishing employee statements and

corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-1 of this chapter. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-2 of this chapter.

(v) For the period of limitations on credit or refund of taxes, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration).

(2) *Statements supporting employer's claims for employee tax.* (i) Every claim, filed by an employer, for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee must include a certification that the employer has repaid or reimbursed the tax to its employee or has secured the employee's written consent to allowance of the filing of the claim for refund except to the extent that the taxes were not withheld from the employee. The employer must retain as part of its records the written receipt of the employee showing the date and amount of the repayment, evidence of reimbursement, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every claim, filed by an employer, for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also must include a certification that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount. The employer must retain the employee's written statement as part of the employer's records.

* * * * *

Par. 10. Section 31.6413(a)-1 is revised to read as follows:

§ 31.6413(a)-1 Repayment or reimbursement by employer of tax erroneously collected from employee.

(a) *Federal Insurance Contributions Act and Railroad Retirement Tax Act—*

(1) *Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employee Railroad Retirement Tax Act (RRTA) tax under

section 3201, and if the employer ascertains the error before filing the return on which the employee tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (a)(1)(i) of this section shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (a)(2) of this section.

(iii) For purposes of this paragraph (a)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) If an employer files a return for a return period on which FICA tax or RRTA tax is reported, collects from an employee and pays to the IRS more than the correct amount of the employee FICA or RRTA tax, and if the employer ascertains the error within the applicable period of limitations on credit or refund, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of such limitations period. However, this paragraph (d)(2) does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee. This paragraph (d)(2) has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit, and the employer chooses to secure the written consent of the employee to the allowance of the refund or credit under the procedure provided in § 31.6402(a)-2.

(ii) If the employer repays the amount of the overcollection to an employee, the employer shall obtain and keep as part of its records the written receipt of the employee, showing the date and amount of the repayment.

(iii) If the employer reimburses the amount of the overcollection to an employee, the employer shall keep as part of its records evidence of reimbursement. The employer shall

reimburse the employee by applying the amount of the overcollection against the employee FICA or RRTA tax which attaches to wages or compensation paid by the employer to the employee prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of the applicable period of limitations on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee tax, the excess amount shall be repaid to the employee as required by this section.

(iv) If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee FICA or RRTA tax that was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of its records a written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of such amount. For this purpose, a claim for refund or credit by the employee includes instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see § 31.6413(c)-1).

(v) For purposes of this paragraph (a)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(vi) For the period of limitations on credit or refund of taxes, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration).

(b) *Income tax withheld from wages—*

(1) *Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of tax required to be withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which such tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period and before the end of the calendar year in which the overcollection was made, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (b)(1)(i) of this section

shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(iii) For purposes of this paragraph (b)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) If an employer files a return for a return period on which tax required to be withheld from wages is reported, collects from an employee and pays to the IRS more than the correct amount of the tax required to be withheld from wages, and if the employer ascertains the error after filing the return but before the end of the calendar year in which the wages were paid, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the end of the calendar year and by the expiration of the return period following the return period in which the error is ascertained. However, this paragraph does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee.

(ii) If the employer repays the amount of the overcollection to an employee, the employer shall obtain and keep as part of its records the written receipt of the employee, showing the date and amount of the repayment.

(iii) If the employer reimburses the amount of the overcollection to an employee, the employer shall keep as part of its records evidence of reimbursement. The employer shall reimburse the employee by applying the amount of the overcollection against the tax under section 3402, which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made and prior to the expiration of the return period following the return period in which the error is ascertained. If the amount of the overcollection exceeds the amount so applied against such tax, the excess amount shall be repaid to the employee as required by this section.

(iv) For purposes of this paragraph (b)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

Par. 11. Section 31.6413(a)-2 is revised to read as follows:

§ 31.6413(a)-2 Adjustments of overpayments.

(a) *In general.* (1) An employer who has overcollected or overpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, and has repaid the amount of the overcollection of such tax to the employee, shall correct such error as provided in this section. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an overpayment of tax shall be made on the prescribed form that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(3) Every adjusted return on which an overpayment is corrected pursuant to this section shall include a certification that the employer has repaid or reimbursed its employee, except where taxes were not withheld from the employee or where, after reasonable efforts, the employer cannot locate the employee. Every adjusted return shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by this section and § 31.6413(a)-1 and by the instructions relating to the form. Every adjusted return, filed by an employer, for overpayment of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the adjusted return is filed, must also include a certification that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-1 of this chapter. For

provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-2 of this chapter.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act—*(1) *Overcollection ascertained before return is filed.* If an employer collects more than the correct amount of employee FICA or RRTA tax from an employee, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, and repays or reimburses the employee under § 31.6413(a)-1(a)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the overcollection under § 31.6413(a)-1(a)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(2) *Error ascertained after return is filed—*(i) *Employee tax.* If an employer files a return for a return period on which FICA tax or RRTA tax is required to be reported and reports on the return more than the correct amount of employee FICA or RRTA tax, and if the employer ascertains the error after filing the return, and repays or reimburses the employee the amount of the overcollection of employee tax, as provided in § 31.6413(a)-1(a)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date of the return for the return period following the return period in which the error is ascertained and before the expiration of the period of limitations on credit or refund. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return

being corrected. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(ii) *Employer tax.* If an employer files a return for a return period on which FICA tax or RRTA tax is required to be reported and reports on the return more than the correct amount of employer FICA or RRTA tax, and if the employer ascertains the error after filing the return, the employer may correct the error through an interest-free adjustment as provided in this section. The employer must first repay or reimburse the employee the amount of any overcollection of employee tax, if any, pursuant to § 31.6413(a)–1(a)(2), before making the adjustment for the employer share, unless the employer could not locate the employee after reasonable efforts. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date of the return for the return period following the return period in which the error is ascertained and before the expiration of the period of limitations on credit or refund. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(c) *Income tax withheld from wages—*
(1) *Overcollection ascertained before return is filed.* If an employer collects more than the correct amount of income tax required to be withheld from wages, and if the employer ascertains the error before filing the return on which the tax is required to be reported, and repays or reimburses the employee under § 31.6413(a)–1(b)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the

overcollection under § 31.6413(a)–1(b)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (c)(2) of this section.

(2) *Error ascertained after return is filed.* If an employer files a return for a return period on which income tax required to be withheld from wages is required to be reported and reports on the return more than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, and repays or reimburses the employee in the amount of the overcollection as provided in § 31.6413(a)–1(b)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required in paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date of the return for the return period following the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. If the amount of the overcollection is not repaid or reimbursed to the employee under § 31.6413(a)–1(b)(2), there is no overpayment to be adjusted under this section. However, the employer may adjust an overpayment of tax attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount withheld, pursuant to this section. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(d) *Adjustments not permitted—*(1) *In general.* If an adjustment cannot be made, a claim for refund or credit may be filed in accordance with § 31.6402(a)–2 or § 31.6414–1.

(2) *90-day exception.* No adjustment in respect of an overpayment may be made if the overpayment relates to a

return period for which the period of limitations on credit or refund of such overpayment will expire within 90 days of filing the adjusted return.

(3) *No adjustment after claim for refund filed.* No adjustment in respect of an overpayment may be made after the filing of a claim for credit or refund of such overpayment under § 31.6402(a)–2.

(4) *No adjustment after IRS notification.* No adjustment may be made upon notification by the IRS that the adjustment is not permitted.

Par. 12. Section 31.6414–1 is amended by revising paragraph (a) to read as follows:

§ 31.6414–1 Credit or refund of income tax withheld from wages.

(a) *In general.* (1) Any employer who pays to the IRS more than the correct amount of income tax required to be withheld from wages under section 3402 or interest, addition to the tax, additional amount, or penalty with respect to such tax, may file a claim for refund of the overpayment in the manner and subject to the conditions stated in this section. The claim for refund must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the form. No refund to the employer will be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(2) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–2.

(3) For interest-free adjustments of overpayments of income tax withheld from wages, see § 31.6413(a)–2.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–25134 Filed 12–28–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-147832-07]

RIN 1545-BH29

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing a regulation that would add an additional item of return information that may be disclosed to the Bureau of the Census (Bureau) for use in the Bureau's annual Survey of Industrial Research and Development. This proposed regulation provides guidance to IRS personnel responsible for disclosing the information. This regulation facilitates the assistance of the IRS to the Bureau in its statistics programs and requires no action by taxpayers and has no effect on their tax liabilities.

DATES: Written and electronic comments and requests for a public hearing must be received by March 31, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-147832-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-147832-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-147832-07).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Richard Hurst, (202) 622-7180 (not a toll-free number); concerning the notice of proposed rulemaking, Glenn Melcher, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1)(A), upon written request from the Secretary of Commerce, the Treasury Secretary is to furnish to the Bureau of the Census (Bureau) return information as may be prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and

conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the regulation provides an itemized description of the items of return information authorized to be disclosed for this purpose. Periodically, the disclosure regulation is amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains a proposed regulation authorizing IRS personnel to disclose an additional item of return information that has been requested by the Secretary of Commerce.

A temporary regulation in this issue of the **Federal Register** amends the Procedure and Administration Regulations (26 CFR part 301) relating to Internal Revenue Code (Code) section 6103(j). The amendments to the regulation contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and conducting related statistical activities authorized by law. Specifically, the amendment to the regulation authorizes the IRS to disclose an additional item of return information that has been requested by the Secretary of Commerce that is necessary for the Bureau's annual Survey of Industrial Research and Development.

The text of the temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the proposed regulation.

Special Analyses

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

Comments and Requests for a Public Hearing

Before the proposed regulation is adopted as a final regulation, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that

are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulation and how it can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this proposed regulation is Glenn Melcher, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section § 301.6103(j)(1)-1 is amended by revising paragraphs (b)(3)(xxv) and (e) to read as follows:

§ 301.6103(j)(1)-1 Disclosure of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) * * *

(3) * * *

(xxv) [The text of proposed amended paragraph (b)(3)(xxv) is the same as the text of § 301.6103(j)(1)-1T(b)(3)(xxv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(e) [The text of proposed amended paragraph (e) is the same as the text of § 301.6103(j)(1)-1T(e) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7-25127 Filed 12-28-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION**Saint Lawrence Seaway Development Corporation****33 CFR Part 401****[Docket No. SLSDC 2007-0005]****RIN 2135-AA27****Seaway Regulations and Rules: Periodic Update, Various Categories****AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by updating the Regulations and Rules in various categories. The proposed changes would update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; and, Information and Reports. The SLSDC is seeking to harmonize the ballast water requirements for vessels transiting the U.S. waters of the Seaway with those currently required by Canadian authorities for transit in waters under Canadian jurisdiction of the Seaway. These proposed amendments are necessary to take account of updated procedures and would eliminate the confusion regarding the requirements for saltwater flushing in the binational waters of the Seaway System.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before January 30, 2008.

ADDRESSES: You may submit comments [identified by Docket Number SLSDC 2007-0005] by any of the following methods:

- **Web Site:** <http://www.Regulations.gov>. Follow the online instructions for submitting comments/submissions.

- **Fax:** 1-202-493-2251.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-001.

- **Hand Delivery:** Documents may be submitted by hand delivery or courier to West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE.,

Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change at <http://www.Regulations.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://www.Regulations.gov>; or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Carrie Bedwell Mann, Chief Counsel, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by updating the Regulations and Rules in various categories. The proposed changes would update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; and, Information and Reports. The SLSDC is seeking to harmonize the ballast water requirements for vessels transiting the U.S. waters of the Seaway with those currently required by Canadian authorities for transit in waters under Canadian jurisdiction of the Seaway. These updates are necessary to take account of updated procedures which would enhance the safety of transits through the Seaway and eliminate the confusion regarding the requirements for saltwater flushing of ballast tanks containing only residual amounts of water and/or sediment in the binational waters of the Seaway System. Several of the proposed amendments are merely editorial or clarification of existing requirements. Where new requirements or regulations are being proposed, an

explanation for such a change is provided below.

Regulatory Notices: Privacy Act:

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

The SLSDC is proposing to make one amendment to the Condition of Vessels section of the joint Seaway regulations. In § 401.12, "Minimum requirements—mooring lines and fairleads," the language is modified to provide vessels the option of using mooring lines that are either wire or synthetic based upon the length of the vessel. Since mooring lines can be wire or synthetic some smaller vessels have presented themselves for transit with a mix of mooring wires and/or synthetic lines. Synthetic lines or hawsers are sufficient to moor the smaller vessels and mooring wire is more than capable of mooring the smaller vessels; therefore, the use of either wire or synthetic lines will be acceptable.

Several amendments to the joint regulations pertaining to Seaway Navigation are being proposed. In § 401.34, "Vessels in tow," the SLSDC is proposing to add a provision that would require every vessel in tow be inspected prior to every transit. The SLSDC is proposing this amendment to ensure navigation safety through inspection of all vessels even when a vessel is in tow. Currently such vessels are being inspected; however, this proposed change will make it a mandatory requirement.

The SLSDC is proposing to amend the joint regulations in § 401.30, "Ballast water and trim." The proposed amendment seeks to harmonize the requirements for saltwater flushing of ballast water tanks containing residual amounts of ballast water and/or sediment with the requirements already in place for vessels transiting Canadian waters of the Seaway System. Vessels transiting the Seaway traverse Canadian and U.S. waters multiple times en route to ports in the Great Lakes St. Lawrence Seaway System. The proposed amendments would make the requirements for foreign flagged vessels (non U.S. or Canadian flagged) to conduct saltwater flushing of each ballast water tank that contains residual amounts of ballast water and/or

sediment the same whether the vessel is transiting U.S. or Canadian waters of the Seaway after having operated outside the Canadian and/or U.S. exclusive economic zone (EEZ). The proposed requirement for saltwater flushing of ballast tanks is intended to mirror the regulations already in effect in waters under Canadian jurisdiction for vessels transiting the Seaway.

Specifically, the SLSDC, in agreement with the SLSMC, proposes to amend the Seaway Regulations and Rules by adding new subsections (f) and (g) to § 401.30, "Ballast water and trim."

These new subsections would require that, as a condition of transiting the Seaway, every foreign flagged vessel (non Canadian or U.S. flagged) must conduct a saltwater flushing of its ballast tanks that contain residual amounts of ballast water in an area 200 nautical miles from any shore before entering waters under Canadian jurisdiction. Saltwater flushing is defined as the addition of mid-ocean water to ballast water tanks: The mixing of the freshwater with residual water and sediment through the motion of the vessel; and the discharge of the mixed water. The resultant residual water remaining in the tank must have a salinity level of at least 30 parts per thousand (ppt). Further, each foreign flagged vessel must maintain the ability to measure salinity levels in each tank onboard the vessel so that final salinities of at least 30 parts per thousand can be ensured. Any vessel that has tanks that fail to reach this salinity level will be required to retain any water in those tanks that is taken onboard in the St. Lawrence River or Great Lakes. The requirements for saltwater flushing would not apply to U.S. or Canadian flagged vessels or to any vessel that has operated exclusively inside the U.S. and/or Canadian EEZ.

In addition, the SLSDC and SLSMC will continue to require that as a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway System after operating beyond the EEZ, the vessel must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000.

In light of the amount of interest and activity regarding control of aquatic nuisance species (ANS) at all levels of government, especially in the U.S. Congress and the U.S. Coast Guard, the joint regulations would be reviewed and revised once either national legislation and/or regulations are issued that would pertain directly to this issue.

In § 401.40, "Entering, exiting, or position in lock", the SLSDC proposes

to prohibit a vessel, when it is being cast off in a lock, from departing in a manner that the stern passes the stop symbol on the local wall nearest the closed gates. Occasionally vessels drift backward in the lock while the mooring lines are being released; preventing the vessel's stern from passing the stop symbol will protect the vessel and the lock gates from possible damage.

Other proposed changes made to the joint regulations, including one to the regulations pertaining to Information and Reports, are merely editorial or for clarification purposes.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The Saint Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of the human environment. The environmental considerations applicable to the basic substance of this proposed regulation are essentially discussed in the U.S. Coast Guard's Environmental Assessment for its May 17, 1999, "Implementation of the National Invasive Species Act of 1996" rulemaking (64 FR 26672) and the U.S. Coast Guard's Environmental Assessment for its August 31, 2005, "Ballast Water Management for Vessels Entering the Great Lakes That Declare No Ballast Onboard" (71 FR 4605).

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 401, Regulations and Rules, as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

1. The authority citation for subpart A of part 401 continues to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. In § 401.12 paragraphs (a)(1) introductory text, (a)(1)(i), (a)(2) introductory text, (a)(3) introductory text, and (a)(4) introductory text are revised to read as follows:

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) * * *

(1) Vessels of 80m or less in overall length shall have at least three mooring lines—wires or synthetic hawsers, two of which shall be independently power operated and one of which shall be hand held:

(i) One line shall lead forward from the break of the bow and one line shall lead astern from the quarter and be independently power operated by winches, capstans or windlasses and lead through closed chocks or fairleads acceptable to the Manager and the Corporation; and

* * * * *

(2) Vessels of more than 80m but not more than 100m in overall length shall have four mooring lines—wires or synthetic hawsers, of which three shall be independently power operated by

winches, capstans or windlasses and one being hand held. All lines shall be led through closed chocks or fairleads acceptable to the Manager and the Corporation, of which three mooring lines:

* * * * *

(3) Vessels of more than 100m but not more than 120m in overall length shall have four mooring wires or synthetic hawsers independently power operated by winches, capstan or windlasses as follows:

* * * * *

(4) Vessels of more than 120m in overall length shall have four mooring wires, two of which shall lead from the break of the bow and two of which shall lead from the quarter, and;

* * * * *

3. § 401.27 is revised to read as follows:

§ 401.27 Compliance with instructions.

Every vessel shall comply promptly with transit instructions given by the traffic controller or any other officer of the Corporation.

4. In § 401.29 paragraph (a) is revised to read as follows:

§ 401.29 Maximum draft.

(a) The draft and speed of a vessel in transit shall be controlled by the master, who shall take into account the vessel's individual characteristics and its tendency to list or squat, so as to avoid striking bottom.¹

* * * * *

5. § 401.30 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 401.30 Ballast water and trim.

* * * * *

(f) As a condition of transit of the Seaway after having operated outside the Canadian and or U.S. exclusive economic zone (EEZ) every foreign flagged vessel (a non Canadian or U.S. flagged vessel) that carries only residual amounts of ballast water and/or sediment that were taken onboard the vessel outside waters under Canadian or U.S. jurisdiction shall:

(1) Conduct a saltwater flushing of their ballast water tanks that contain the residual amounts of ballast water and/or sediment in an area 200 nautical miles from any shore before entering waters of the Seaway. Saltwater flushing is defined as the addition of midocean water to ballast water tanks: The mixing of the freshwater with residual water and sediment through the motion of the vessel; and the discharge of the mixed water, such that the resultant residual

water remaining in the tank has as high salinity as possible, and is at least 30 parts per thousand (ppt). The vessel should take on as much mid-ocean water into each tank as is safe (for the vessel and crew) in order to conduct saltwater flushing. And adequate flushing may require more than one fill-mix-empty sequence, particularly if only small amounts of water can be safely taken onboard at one time. The master of the vessel is responsible for ensuring the safety of the vessel, crew, and passengers. Vessels reporting only residual ballast water onboard should take particular care to conduct saltwater flushing on the transit to the Great Lakes so as to eliminate fresh and or brackish water residuals in ballast tanks; and

(2) Maintain the ability to measure salinity levels in each tank onboard the vessel so that final salinities of at least 30 ppt can be ensured.

(g) Every foreign flagged vessel that is found not in compliance with § 401.30(f) shall retain any ballast water taken aboard in the St. Lawrence River or Great Lakes.

6. In § 401.31 paragraph (c) introductory text is revised to read as follows:

§ 401.31 Meeting and passing.

* * * * *

(c) Except as instructed by the traffic controller, no vessel shall overtake and pass or attempt to overtake and pass another vessel—

* * * * *

7. § 401.34 is revised to read as follows:

§ 401.34 Vessels in tow.

No vessel that is not self-propelled (including but not limited to tug/tows and/or deadship/tows) shall be underway in any Seaway waters unless it is securely tied to an adequate tug or tugs, in accordance with special instructions given by the Manager or the Corporation pursuant to § 401.33. Every vessel in tow has to be inspected prior to every transit unless it has a valid Seaway Inspection Certificate. The owner/master shall give a 24 hour notice of arrival when an inspection is requested.

8. § 401.36 is revised to read as follows:

§ 401.36 Order of passing through.

Vessels shall advance to a lock in the order instructed by the traffic controller.

9. In § 401.37 paragraph (a) is revised to read as follows:

§ 401.37 Mooring at tie-up walls.

(a) Upon arrival at a lock, a vessel awaiting instructions to advance shall

moor at the tie-up wall, close up to the designated limit or approach sign or to the ship preceding it, whichever is specified by the traffic controller or an officer of the Corporation.

* * * * *

10. In § 401.40 paragraph (b) is revised to read as follows:

§ 401.40 Entering, exiting or position in lock.

* * * * *

(b) On being cast off in a lock, no vessel shall be able to fall back in such a manner that the stern passes the stop symbol on the lock wall nearest the closed gates.

* * * * *

11. In § 401.48 paragraph (a) is revised to read as follows:

§ 401.48 Turning basins.

* * * * *

(a) With permission from the traffic controller; and

* * * * *

12. § 401.49 is revised to read as follows:

§ 401.49 Dropping anchor or tying to canal bank.

Except in an emergency, no vessel shall drop anchor in any canal or tie-up to any canal bank unless authorized to do so by the traffic controller.

13. In § 401.50 the introductory text is revised to read as follows:

§ 401.50 Anchorage areas.

Except in an emergency, or unless authorized to do so by the traffic controller, no vessel shall drop anchor in any part of the Seaway except in the following designated anchorage areas:

* * * * *

14. In § 401.51 paragraph (a) is revised to read as follows:

§ 401.51 Signaling approach to a bridge.

(a) Unless a vessel's approach has been recognized by a flashing signal, the master shall signal the vessel's presence to the bridge operator by VHF radio when it comes abreast of any of the bridge whistle signs.

* * * * *

15. In § 401.58 paragraph (a) is revised to read as follows:

§ 401.58 Pleasure craft scheduling.

(a) The transit of pleasure craft shall be scheduled by the traffic controller or the officer in charge of a lock and may be delayed so as to avoid interference with other vessels; and

* * * * *

16. § 401.83 is revised to read as follows:

¹ The main channels between the Port of Montreal and Lake Erie have a controlling depth of 8.23m.

§ 401.83 Reporting position at anchor, wharf, etc.

A vessel anchoring in a designated anchorage area, or elsewhere, and a vessel mooring at a wharf or dock, tying-up to a canal bank or being held on a canal bank in any manner shall immediately report its position to the traffic controller and it shall not resume its voyage without the traffic controller's permission.

Issued at Washington, DC, on December 21, 2007.

Saint Lawrence Seaway Development Corporation.

Collister Johnson, Jr.,
Administrator.

[FR Doc. E7-25340 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-61-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2006-0003; FRL-8512-5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of a revision to the Illinois Ozone State Implementation Plan (SIP). On August 17, 2005, Illinois requested that five compounds be added to its list of compounds exempt from being considered a volatile organic compound (VOC). EPA no longer considers four of the compounds to be VOCs because the compounds were shown to be negligibly photochemically reactive. Thus, the compounds do not lead to ozone formation. For the fifth compound, t-butyl acetate, EPA determined that it is not considered a VOC for emission limits and VOC content requirements, but it is considered a VOC for recordkeeping, emission reporting, and inventory requirements. Illinois has indicated it is correcting the restrictions on t-butyl acetate. Consequently, EPA is alternatively proposing approval of the SIP revisions if t-butyl acetate is removed from the list of compounds exempt from being considered VOC or if the special requirements for t-butyl acetate are clearly indicated. Illinois must submit the supporting documentation during the comment period for this rule.

DATES: Comments must be received on or before January 30, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-

OAR-2006-0003, by one of the following methods:

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

2. *E-mail*: mooney.john@epa.gov.

3. *Fax*: (312)886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2006-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, (312) 886-6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

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

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Revisions Did the State Request?
- III. What Is EPA's Analysis of the Revisions?
- IV. What Action Is EPA Taking Today?
- V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Revisions Did the State Request?

Illinois requested revisions to its ozone SIP which would add five compounds from the list of compounds considered to not be VOC. The State requested the compounds 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C₃F₇OCH₃), 3-ethoxy 1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane (HFE-7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea), methyl formate, and t-butyl acetate be added to its list of compounds exempt from VOC requirements. Illinois also requested the addition of special requirements for t-butyl acetate. The compound, t-butyl acetate, will be considered VOC for recordkeeping, emissions reporting, modeling, and inventory requirements, but is not considered VOC for emission limits or content requirements. The special restrictions on t-butyl acetate are listed in a separate section from the listing of compounds exempt from being considered VOCs.

III. What Is EPA's Analysis of the Revisions?

EPA added four compounds, n-C₃F₇OCH₃, HFE-7500, HFC-227ea, and methyl formate, to its list of compounds exempt from VOC requirements on November 29, 2004 (69 FR 69290). EPA also provided special requirements for t-butyl acetate users in a separate November 29, 2004, action (69 FR 69298). Users of t-butyl acetate still must follow the recordkeeping, emissions reporting, modeling, and inventory requirements. However, t-butyl acetate is not considered a VOC for content requirements and emission limits.

Illinois added the four compounds from the EPA plus t-butyl acetate to Title 35 of the Illinois Administration Code Section 211.7150(a), its list of compounds exempt from VOC requirements. It also added Section 211.7150(e), which provides the same unique requirements for t-butyl acetate users as the EPA action did. It is not appropriate for t-butyl acetate to be listed in 211.7150(a) because this compound is not exempt from all VOC requirements as are the other compounds listed there. It should be listed in 211.7150(e) only, so the unique requirements for t-butyl acetate are clear. This would follow the approach

EPA took in making these revisions to the Federal definition of VOC through separate actions.

EPA would find the requested revisions approvable if Illinois removes t-butyl acetate from the list of compounds exempt from VOC requirements in 211.7150(a). This would leave it listed only under 211.7150(e) which makes it clear what requirements apply to t-butyl acetate users. EPA would also find it acceptable for Illinois to add a note to section 211.7150(a) that certain compounds listed in section 211.7150(a) are subject to the requirements of 211.7150(e). This would direct t-butyl acetate users to section 211.7150(e) where the special requirements for this compound are stated.

IV. What Action Is EPA Taking Today?

EPA is proposing disapproval of the requested ozone revisions to the Illinois SIP. In the alternative, EPA is proposing approval of ozone revisions to the Illinois SIP if a correction is made to Title 35 of the Illinois Administration Code Section 211.7150(a) to remove t-butyl acetate from the list of compounds exempt from VOC regulations or if it is clearly stated that t-butyl acetate is subject to the requirements of section 211.7150(e). Illinois must submit the supporting documentation of the correction during the comment period for this rule for the alternative, proposed approval to be considered. Illinois has proposed adding language to section 211.7150(a) that states some compounds listed in that section must also follow the restrictions in section 211.7150(e). EPA finds this language acceptable. If Illinois submits the final state rule with language of the proposed state rule, this action should be considered a proposed approval.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal

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

Unfunded Mandates Reform Act

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

Executive Order 13132: Federalism

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

Because it is not a "significant regulatory action" under Executive

Order 12866 or a “significant regulatory action,” this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–25405 Filed 12–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2007–0554; FRL–8512–6]

Clean Air Act Reclassification of the Houston/Galveston/Brazoria Ozone Nonattainment Area; Texas; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant a request by the Governor of the State of Texas to voluntarily reclassify the Houston/Galveston/Brazoria (HGB)

ozone nonattainment area from a moderate 8-hour ozone nonattainment area to a severe 8-hour ozone nonattainment area. This request was made in a letter from Governor Rick Perry to the EPA Administrator on June 15, 2007. In addition to the reclassification proposal, EPA is also proposing and taking comment on a range of dates from December 15, 2008 to April 15, 2010 for the State to submit a revised State Implementation Plan (SIP) addressing the severe ozone nonattainment area requirements of the Clean Air Act (CAA).

EPA will accept comments on all aspects of this proposed action. However, as discussed in Section II below, the CAA mandates the Agency to grant a voluntary reclassification when requested by a State.

DATES: Written comments must be received on or before January 30, 2008.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0554, by one of the following methods:

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

- *EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0554. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; fax number 214–665–7263; e-mail address young.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us” or “our” is used, we mean the EPA.

Correspondence discussed in this proposal can be found on the internet in the electronic docket for this action. To access the correspondence, please go to <http://www.regulations.gov> and search for Docket No. EPA–R06–OAR–2007–0554, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above.

Table of Contents

- I. Background
- II. Reclassification of the HGB Nonattainment Area to Severe Ozone Nonattainment
- III. Consequences of Reclassification
 - A. Effect on Stationary Air Pollution Sources
 - B. Relief From Attainment Demonstration Deadlines of Previous Classification
 - C. Required Plan and Submission Date
 - 1. Submission Date for HGB’s 8-Hour Ozone Severe State Implementation Plan
 - 2. Severe Area Plan Requirements
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. Background

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. Upon the date of enactment of the 1990 CAA Amendments, the HGB area was classified as a severe ozone nonattainment area for the 1-hour ozone National Ambient Air Quality Standard (NAAQS).¹

On July 18, 1997, EPA, citing continued health concerns with the 1-hour ozone standard, promulgated a new 8-hour ozone NAAQS aimed at better protecting the health of those particularly susceptible to the effects of ozone (62 FR 38856, July 18, 1997). The 8-hour standard is more protective of public health than the older 1-hour standard. On April 30, 2004, we established 8-hour ozone standard designations and classifications for every area in the United States (69 FR 23858). The HGB area was classified as a moderate nonattainment area for the 8-hour ozone standard with an attainment date no later than June 15, 2010. Also on April 30, 2004, we issued a final rule addressing key elements of the program to implement the 8-hour standard (Phase 1 Rule) (69 FR 23951). The classifications and Phase 1 Rule were the subject of litigation, but since mid-2007 it has been clear that the HGB classification under the 8-hour rule will remain in effect.²

¹ 56 FR 56694, November 6, 1991 and CAA section 181(a)(1).

² *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

II. Reclassification of the HGB Nonattainment Area to Severe Ozone Nonattainment

On June 15, 2007, EPA received a request from Governor Perry seeking voluntary reclassification of the HGB area. The Governor requested that EPA reclassify the HGB area from a moderate nonattainment area to a severe nonattainment area under the 8-hour ozone standard. A severe classification is two classification categories higher than the current classification of moderate. This request was made because the State does not believe that it can reduce emissions enough to reach attainment by the current June 2010 attainment date.³ A severe classification means that the HGB area must attain the 8-hour ozone standard as expeditiously as practicable but no later than June 15, 2019.

EPA is reviewing this request as one made pursuant to section 181(b)(3) of the CAA which provides for “voluntary reclassification” and states that “* * * [t]he Administrator shall grant the request of any State to reclassify a nonattainment area in that State * * * to a higher classification” and that “* * * [t]he Administrator shall publish a notice in the **Federal Register** of any such request and of action by the Administrator granting the request.”

EPA intends to take a final action granting the State’s request for a voluntary reclassification. The plain language of section 181(b)(3) mandates that we approve such a request and, as such, gives the Agency no discretion to deny it.

III. Consequences of Reclassification**A. Effect on Stationary Air Pollution Sources**

Upon reclassification, stationary air pollution sources in the HGB ozone nonattainment area will be subject to severe ozone nonattainment area New Source Review (NSR) and Title V permit requirements. The source applicability thresholds for major sources and major source modification emissions will be 25 tons per year for volatile organic compounds (VOC) and nitrogen oxides (NO_x). For new and modified major stationary sources subject to review under Texas Administrative Code Title 30, Chapter 116, Section 116.150 (30 TAC 116.150) in the EPA approved SIP, VOC and NO_x emission increases from the proposed construction of the new or modified major stationary sources must be offset by emission reductions by a

³ Letter from Governor Rick Perry to Mr. Stephen Johnson, Administrator of the EPA, dated June 15, 2007.

minimum offset ratio of 1.30 to 1. (See 30 TAC 116 and 40 CFR 52.2270(c)).

B. Relief From Attainment Demonstration Deadline of Previous Classification

EPA believes that when a nonattainment area is reclassified, the CAA attainment demonstration requirements of the new classification supersede those of the previous classification. In other words, once a nonattainment area has been reclassified and as a result has a new statutory attainment deadline, the deadline applicable to the attainment demonstration under the previous classification no longer has any logical, practical or legal significance. Consequently, when HGB is reclassified to severe, any potential for EPA to find the area has failed to submit any required documents pertinent to the attainment demonstration under the previous classification will be moot.

EPA also believes that reclassification would not provide a basis for extending submission deadlines for SIP elements unrelated to the attainment demonstration, that were due for the area’s moderate classification. In June 2007 Texas submitted an 8 hour SIP to EPA that included the requirements of (1) a moderate area reasonable further progress demonstration (40 CFR 51.910) which includes contingency control measures if the area fails to meet reasonable further progress (CAA 172(c)(9)), (2) a reasonably available control technology demonstration (40 CFR 51.912), and (3) a 2002 emissions inventory (40 CFR 51.915). Other moderate area SIP requirements are currently being implemented. These include NSR rules (40 CFR part 165) and a vehicle inspection and maintenance program (40 CFR 51.905(a)(1)(i)).

C. Required Plan and Submission Date**1. Submission Date for HGB’s 8-Hour Ozone Severe State Implementation Plan**

In a letter dated May 21, 2007, in response to questions from the Texas Commission on Environmental Quality (TCEQ), the EPA’s Acting Assistant Administrator for Air requested that the Chairman of TCEQ provide to EPA a basis for setting a new deadline for submission of the severe area SIP attainment demonstration and other required elements of the new classification, and that based on this recommendation and documentation, along with other relevant information, EPA would establish a SIP submission

date.⁴ The Wehrum letter further stated that the submission date should be as soon as practicable but not beyond June 15, 2010. In a July 10, 2007 letter to Texas Governor Rick Perry we also requested that TCEQ provide information to show the amount of time needed for the State to submit its plan as soon as practical and stated that we would work with TCEQ on setting a date for submission of the new SIP obligations and ensuring interim progress in reducing emissions prior to attainment.⁵ In a letter dated August 21, 2007, the Executive Director of TCEQ provided a schedule of milestones leading to a SIP adoption date of March 2010. TCEQ stated that the recommended timeline reflects the complex technical work in developing an attainment demonstration; updating emissions inventory data (including reasonable further progress milestones); revising the existing 2005 photochemical modeling; developing a new and more representative 2006 photochemical modeling episode; and developing and adopting effective control strategies. TCEQ also stated that its schedule would allow for a meaningful stakeholder process for developing effective control strategies.⁶ If we accept the timing set forth in the Texas letter it suggests to us that April 15, 2010 could be an appropriate date for submission of the revised SIP for the 8-hour ozone standard.

Alternatively, December 15, 2008, (18 months from the request for reclassification), could be considered an appropriate date for submission of the SIP revision to EPA. This date is analogous to the 18 months allowed for SIP submissions pursuant to a SIP call under CAA section 110(k)(5). It is also in keeping with the timeframes set forth in the involuntary reclassifications, which in general have been approximately 12 months from the effective date of a final reclassification.⁷ Given these two dates, we are proposing and taking comment on a range of dates from December 15, 2008 to April 15, 2010 for submission of the revised SIP for the 8-hour ozone standard. We request that any comments on the date for submission of the revised SIP be

accompanied by justification for the commenter's position. We will review the comments and make a decision on the appropriate SIP submission date in our final action on the reclassification.

2. Severe Area Plan Requirements

A revised SIP for the HGB area must include all the requirements for serious ozone nonattainment area plans such as: (1) Enhanced ambient monitoring (CAA 182(c)(1)), (2) an enhanced vehicle inspection and maintenance program (CAA 182(c)(3)), (3) a clean fuel vehicle program or an approved substitute (CAA 182(c)(4)), and (4) gasoline vapor recovery for motor vehicle refueling emissions (CAA 182(b)(3)⁸). It must also meet the severe area requirements including: (1) an attainment demonstration (40 CFR 51.908), (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912), (3) reasonable further progress reductions in VOC and NO_x emissions (40 CFR 51.910), (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9) and 182(c)(9)), (5) transportation control measures to offset emissions from growth in vehicle miles traveled (CAA 182(d)(1)(A)), (6) reformulated gasoline (CAA 211(k)(10)(D)), (7) NSR permits (40 CFR part 165), and (7) fees on major sources if the area fails to attain the standard (CAA 182(d)(3) and 185). See also the requirements for serious and severe ozone nonattainment areas set forth in CAA sections 182(c), 182(d) and 185. Because the HGB area was classified as severe under the 1-hour ozone standard, many of these requirements are currently being implemented.

The revised SIP for the HGB area must also contain adopted regulations to adopt and implement control measures in regulatory form by specified dates sufficient to make required reasonable further progress in emission reductions and to attain the 8-hour ozone NAAQS as expeditiously as practicable but not later than June 15, 2019. The new attainment demonstration should be based on the best information available.

IV. Proposed Action

Pursuant to section 181(b)(3) and based on a voluntary request by the state of Texas, we are proposing to grant the request of the Governor of Texas to reclassify the HGB 8-hour ozone

nonattainment area from moderate to severe. We are also proposing to set due dates for the submission of a revised SIP addressing the severe area requirements. We are proposing to set a date within the range from December 15, 2008 to April 15, 2010 for the State to submit a revised SIP addressing the CAA severe ozone nonattainment area requirements.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. EPA has determined that the voluntary reclassification would not result in any of the effects identified in Executive Order 12866 section 3(f). Voluntary reclassifications under 181(b)(3) of the CAA are based solely upon requests by the State and EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, reclassification cannot be said to impose a materially adverse impact on State, local or tribal governments or communities. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

In addition, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). And these actions do 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), because EPA is required to grant requests by States for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate. This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

⁴ Letter from William Wehrum, EPA Assistant Administrator, to Ms. Kathleen Hartnett White, TCEQ Chairman, dated May 21, 2007.

⁵ Letter from Lawrence E. Starfield, Acting EPA Regional Administrator, to Governor Rick Perry, dated July 10, 2007.

⁶ Letter from Glenn Shankle, TCEQ Executive Director to Mr. Richard E. Greene, EPA Regional Administrator, dated August 21, 2007.

⁷ See the reclassification notices for the Dallas/Fort Worth area (63 FR 8128, February 18, 1998) and the Beaumont/Port Arthur area (69 FR 16483, March 30, 2004).

⁸ Under CAA section 202(a)(6) gasoline vapor recovery remains a requirement for serious and above nonattainment areas but is no longer a requirement for moderate nonattainment areas. Please see 59 FR 16262, April 6, 1994.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. As discussed above, a voluntary reclassification under section 181(b)(3) of the CAA is based solely on the request of a State and EPA is required to grant such a request. In this context, it would thus be inconsistent with applicable law for EPA, when it grants a State's request for a voluntary reclassification to, use voluntary consensus standards. Thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) also do not apply. In addition, this proposed 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.).

Lastly, executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. As stated earlier in this Notice EPA intends to take a final action granting the State's request for a voluntary reclassification. The plain language of section 181(b)(3) of CAA mandates that we "shall" approve such a request if it is made in accordance with the requirements of the Act, and, as such, does not provide the Agency with the discretionary authority to address concerns raised outside the Act, including those contained in Executive Order 12898.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping

requirements, Volatile organic compounds.

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

Dated: December 18, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E7-25402 Filed 12-28-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 13, 17, 32, and 52

[FAR Case 2006-026; Docket 2007-0001; Sequence 13]

RIN 9000-AK87

Federal Acquisition Regulation; FAR Case 2006-026, Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to restrict the use of the Governmentwide commercial purchase card as a method of payment for contractors with debts subject to the Treasury Offset Program.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before February 29, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006-026 by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

• To search for any document, first select under "Step 1," "Documents with an Open Comment Period" and select under "Optional Step 2," "Federal Acquisition Regulation" as the agency of choice. Under "Optional Step 3," select "Proposed Rules". Under "Optional Step 4," from the drop down list, select "Document Title" and type the FAR case number "2006-026". Click the "Submit" button. Please include your name and company name (if any) inside the document. You may also

search for any document by clicking on the "Search for Documents" tab at the top of the screen. Select from the agency field "Federal Acquisition Regulation", and type "2006-026" in the "Document Title" field. Select the "Submit" button.

• Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006-026 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2006-026.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 and other statutes provide the tools for administering a centralized program for the collection of delinquent, non-tax and tax debts. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is charged with implementing the Government's delinquent debt collection program. Since 1996, FMS has collected more than \$24.4 billion in delinquent debt. In fiscal year 2006, collections of delinquent debt remained at a constant \$3.1 billion.

To collect delinquent debts owed to Federal agencies and states, FMS uses the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. TOP uses both "offsets" and "continuous levies" to collect delinquent debts.

Offset is a process whereby Federal payments are reduced or "offset" to satisfy a person's overdue Federal debt, child support obligation, or state tax debt. A payee's name and taxpayer identification number are matched against a Treasury/FMS database of delinquent debtors for automatic offset of funds. Offset funds are then used to satisfy payment of the delinquent debt to the extent allowed by law.

Under the continuous levy program, delinquent Federal tax debts are collected by levying non-tax payments until the debt is satisfied, as authorized by the 1997 Taxpayer Relief Act. The

continuous levy program includes levy of some vendor payments (Treasury disbursed and non-Treasury disbursed payments), Federal employee salary payments, the Office of Personnel Management retirement payments, and social security benefit payments. Continuous levy is accomplished through a process almost identical to that of offset. FMS matches delinquent debtor data with payment record data for automated collection of the debt at the time of payment, after the delinquent taxpayer has been afforded due process.

FMS is currently unable to offset or apply a continuous levy to payments made to contractors with delinquent debts when the Governmentwide commercial purchase card is used as the method of payment. When the Governmentwide commercial purchase card is used as the method of payment, the Government does not make a direct payment to the contractor. Instead, the processing bank for the Governmentwide commercial purchase card pays the contractor.

To assess the significance of the problem, FMS and VISA, one of the processing banks, matched VISA payments for Governmentwide purchase card transactions for one year. As a result of the match, FMS determined that approximately \$73.5 million dollars of delinquent debts subject to collection under TOP were not collected because the debtors were paid using the Governmentwide commercial purchase card. The individual payments that would otherwise have been collected were all in excess of the micropurchase threshold.

To help increase the collection of delinquent debts owed to the Government, the rule proposes to amend the FAR to require contracting officers to determine whether the Central Contractor Registration (CCR) indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt indicator is found, the Governmentwide commercial purchase card is not authorized as a method of payment. The contracting officer is required to check for the flag at the time of contract award, order placement, and again before exercising any options. The rule also proposes to amend the applicable Governmentwide commercial purchase card payment clause at 52.232-36 to advise contractors that the Governmentwide commercial purchase card is not authorized as a method of payment if a debt indicator is included in the CCR for the contractor. The clause is written to allow contracting officers to unilaterally exercise options without

having to bilaterally negotiate revisions to the original contract terms and conditions if the debt indicator is subsequently found during the execution of an option. This rule would not apply to individual travel charge cards or centrally billed accounts for travel/transportation services.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only impacts the method by which a contractor can be paid when the contractor has a delinquent debt. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 8, 13, 17, 32, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006-026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 8, 13, 17, 32, and 52

Government procurement.

Dated: December 20, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 8, 13, 17, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 8, 13, 17, 32, and 52 continues to read as follows: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Amend section 4.1103 by revising paragraph (a)(3) to read as follows:

4.1103 Procedures.

(a) * * *

(3) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204-7, or 52.212-4(t), or a similar agency clause, except when payment by the Governmentwide commercial purchase card is contemplated (see 32.1108(b)(2)).

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Revise section 8.405-7 to read as follows:

8.405-7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card (but see 32.1108(b)(2)).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

4. Amend section 13.003 by revising paragraph (e) to read as follows:

13.003 Policy.

* * * * *

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions (but see 32.1108(b)(2)).

* * * * *

5. Amend section 13.301 by revising the first sentence of paragraph (a) and paragraph (c)(3) to read as follows:

13.301 Governmentwide commercial purchase card.

(a) Except as provided in 32.1108(b)(2), the Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. * * *

* * * * *

(c) * * *

(3) Make payments, when the contractor agrees to accept payment by the card (but see 32.1108(b)(2)).

PART 17—SPECIAL CONTRACTING METHODS

6. Amend section 17.207 by revising paragraph (f) to read as follows:

17.207 Exercise of options.

* * * * *

(f) Before exercising an option—

(1) The contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and Part 6. To satisfy requirements of Part 6

regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, *e.g.*—

- (i) A specific dollar amount;
- (ii) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;
- (iii) In the case of a cost-type contract, if—

(A) The option contains a fixed or maximum fee; or

(B) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(iv) A specific price that is subject to an economic price adjustment provision; or

(v) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

(2) See 32.1108(b)(2) for restrictions on the use of the Governmentwide commercial purchase card as a method of payment when the Central Contractor Registration (CCR) shows a delinquent debt flag.

* * * * *

PART 32—CONTRACT FINANCING

7. Amend section 32.1108 by revising paragraph (b) to read as follows:

32.1108 Payment by Governmentwide commercial purchase card.

* * * * *

(b)(1) Written contracts to be paid by purchase card should include the clause at 52.232–36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(2)(i) Contracting officers are required to verify (by looking in CCR) whether the contractor has any delinquent debt subject to collection under the Treasury Offset Program (TOP) program at contract award, order placement, and prior to any option exercise. Information on TOP is available at <http://fms.treas.gov/debt/index.html>.

(ii) The contracting officer shall not authorize the Governmentwide commercial purchase card as a method of payment when the Central Contractor Registration (CCR) indicates that the contractor has delinquent debt subject to collection under the TOP. In such cases, the contracting officer shall

provide alternative payment instructions to the contractor. Contracting officers shall not use the presence of the delinquent debt indicator to exclude a contractor from receipt of the contract, order, or exercised option.

(iii) If a contractor alerts the contracting officer that the CCR debt flag indicator has been changed to no longer show a delinquent debt, the contracting officer may take steps to authorize payment by Governmentwide commercial purchase card.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.232–36 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.232–36 Payment by Third Party.

* * * * *

PAYMENT BY THIRD PARTY (DATE)

(a) *General.* (1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment when the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. If the CCR subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.* (1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make such payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

* * * * *

[FR Doc. E7–25424 Filed 12–28–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 071031633–7834–01]

RIN 0648–AW23

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would limit the harvest of Pacific halibut by guided sport charter vessel anglers in International Pacific Halibut Commission (IPHC) Area 2C of Southeast Alaska to the guideline harvest level (GHL) for that area under two different scenarios. First, if the GHL remains unchanged in 2008, a suite of three management measures are proposed to be added to an existing two-halibut daily catch and size limit. These management measures include a prohibition on the harvest of halibut by charter vessel guides, operators, and crew; a limit on the number of fishing lines that may be used on a charter vessel of six or the number of charter vessel anglers onboard, whichever is less; and an annual catch limit of four halibut per charter vessel angler. Second, if the GHL decreases in 2008, then a one-halibut daily catch limit is proposed to be substituted for the existing two-halibut daily catch limit. The prohibition of halibut harvest by charter vessel guides, operators, and crew, and the 6-line limit also are proposed under the second scenario. This proposed regulatory change is necessary to reduce the halibut harvest in the charter vessel sector to the GHL for Area 2C. The intended effect of this action is a reduction in the poundage of halibut harvested by the guided sport charter vessel sector in Area 2C to the GHL while minimizing adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species.

DATES: Comments must be received no later than January 30, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648–

AW23" by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P. O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557.

- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809, or the NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region Web site at <http://www.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address, and by e-mail to David_Rostker@omb.eop.gov or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7228, jay.ginter@noaa.gov, or Julie Scheurer, 907-586-7356, julie.scheurer@noaa.gov.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by

the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretaries of State and Commerce, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (March 14, 2007; 72 FR 11792).

The Halibut Act also provides the Council with authority to recommend regulations to the Secretary to allocate harvesting privileges among U.S. fishermen. This process requires the Council to submit a recommendation to the Secretary as a proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law. The Council has exercised this authority, most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut. The regulatory program proposed by this action is linked to the overall management of the halibut fisheries by the IPHC and a previous action by the Council and NMFS to establish a guideline harvest level (GHL) for managing the harvest of halibut by the guided sport charter vessel fishery (August 8, 2003; 68 FR 47256).

Management of the Halibut Fisheries

The harvest of halibut occurs in three basic fisheries—the commercial, sport, and subsistence fisheries. Additional fishing mortality occurs as bycatch or incidental catch while targeting other species and wastage of halibut that are caught but cannot be used for human food.

The IPHC annually determines the amount of halibut that may be removed from the resource without causing biological conservation problems on an area-by-area basis in all areas of Convention waters. It imposes catch limits, however, on only the commercial sector in areas in and off of Alaska. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, recreational, subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The target amount of allowable harvest for a given area is calculated by multiplying a fixed harvest rate by the estimate of exploitable biomass. This target level is called the total constant exploitation yield (CEY) as it represents the target level for total removals (in net pounds) for that area in the coming year. The

IPHC subtracts estimates of all non-commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after the removals are subtracted, is the maximum catch or "fishery CEY" for an area's directed commercial fixed gear fishery.

This method of determining the commercial fishery's catch limit in an area results in a decrease in the commercial fishery's use of the resource as other non-commercial uses increase their proportion of the total CEY. As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY. This method for determining the limit for the commercial use of halibut has worked well for many years to conserve the halibut resource, provided that the other non-commercial uses of the resource have remained relatively stable and small. Although most of the non-commercial uses of halibut have been relatively stable, growth in the guided sport charter vessel fishery in recent years, particularly in Area 2C, has resulted in the guided sport charter vessel fishery harvesting a larger amount of halibut, thereby reducing the amount available to the commercial fishery.

Guideline Harvest Level (GHL)

Currently, the Council's only approved management policy in effect for the charter vessel fisheries is to have separate GHLs for Area 2C and Area 3A (50 CFR 300.65(c)). The GHLs serve as benchmarks for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality. The GHLs do not limit the charter vessel fisheries. Although it is the Council's policy that the charter vessel fisheries should not exceed the GHLs, no constraints have been imposed on the charter vessel fisheries for GHLs that have been exceeded in the past.

The Council has discussed the expansion of the charter vessel fishery for halibut since 1993. The GHLs were initially adopted by the Council in 1997 without implementing regulations. The Council stated its intent to maintain a stable charter vessel fishing season without a mid-season closure. If a GHL were exceeded, other management measures would be triggered to take effect in years following attainment of the GHL. The Council envisioned "framework" regulations of increasing restrictiveness depending on the extent to which a GHL was exceeded. Proposed framework regulations were published in 2002 (January 28, 2002; 67 FR 3867);

however, NMFS informed the Council later that year that its framework regulations could not be implemented as envisioned. Hence, a final rule establishing the GHLS was published without any restrictive regulations (August 8, 2003; 68 FR 47256).

The GHLS represent a pre-season specification of acceptable annual halibut harvests in the charter vessel fisheries in Areas 2C and 3A. To accommodate some growth in the charter vessel sector while approximating historical harvest levels, the Council recommended GHLS based on 125 percent of the average 1995 through 1999 charter vessel harvest. For Area 2C the GHL was set at 1,432,000 lb (649.5 mt) net weight, and in Area 3A the GHL was set at 3,650,000 lb (1,655.6 mt) net weight. When the Council recommended these GHLS, halibut stocks were considered to be near record high levels of abundance. To accommodate decreases and subsequent increases in abundance, the Council recommended a system of step-wise adjustments in each GHL based on a predetermined uniform measure of stock abundance. The measure used was the CEY determined annually by the IPHC. Specifically, the Council linked a step-wise reduction in the GHL in any one year to the decrease in the CEY as compared to the 1999 through 2000 average CEY. For example, if the halibut stock in Area 2C were to fall from 15 to 24 percent below its 1999 through 2000 average CEY, then the GHL for Area 2C would be reduced by 15 percent. Conversely, as the CEY increased from low levels, the GHL also would increase in the same step-wise manner. However, regardless of how high the CEY may rise above its 1999 through 2000 average, the GHLS were not designed to increase above their maximum amounts. Since 2003 when the GHLS became effective, they have never been reduced below their maximum level because declines in the total CEY have not been sufficient to trigger the first step reduction of the GHLS.

Recent Harvests of Halibut in Area 2C

In Area 2C, the commercial, sport and subsistence harvest of halibut over the past 10 years (1997 through 2006) has been estimated by the IPHC to average about 12.454 million lb (5,649.0 mt) per year. Of this annual average total removal from the halibut resource, the commercial fishery accounts for about 76.7 percent, the sport fishery (guided and unguided combined) account for about 19.1 percent, and the remaining 4.2 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence

harvest of halibut were made based on surveys conducted by the Alaska Department of Fish and Game (ADF&G) during the past three years and average about 600,000 lb (272.2 mt) per year.

In the most recent three years (2004 through 2006), the annual average of total halibut removals in Area 2C is 14.142 million lb (6,414.7 mt) of which the commercial fishery has taken about 73.8 percent, the sport fishery has taken about 20.7 percent, the subsistence fishery has taken about 4.3 percent, and about 1.2 percent is attributed to bycatch and wastage. The commercial fishery is the primary user of the halibut resource in Area 2C followed by the sport fishery, which together account for almost 95 percent of the total removals from the halibut resource.

In Area 2C, the sport fishery is comprised of guided fishing on charter vessels and unguided angling. Residents of Southeast Alaska and their family and friends are the primary unguided anglers, while non-resident tourists are the main clients for guided fishing on charter vessels. The linkage between guided sport fishing and tourism is apparent from data collected by ADF&G and compiled by IPHC staff. Over the past 10 years (1997 through 2006), the average guided sport harvest of halibut has been 1.431 million lb (649.1 mt) per year and the unguided sport harvest of halibut has amounted to 0.951 million lb (431.4 mt) per year. Proportionately, the guided charter vessel harvest to unguided sport harvest has been a ratio of about 60 to 40. The guided sport harvest has increased in more recent years. Over the past five years (2002 through 2006), the annual guided sport charter vessel harvest amounted to an average 63.9 percent of the total sport harvest of halibut in Area 2C, and in 2005 reached a record 69.8 percent of the total sport harvest. In response, the Council is considering a management program to restrict the charter vessel harvest of halibut.

Since their implementation in 2003, the GHLS for Areas 3A and 2C have been exceeded by the charter vessel halibut harvest in 2004, 2005, and 2006. In Area 2C, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was one percent under the GHL, but in 2004 and 2005, it was 22 percent and 36 percent over the GHL, respectively.

The total Area 2C harvest of halibut by the sport fishery in 2006 was 2.537 million lb (1,150.8 mt), based on final ADF&G sport harvest estimates reported in October 2007. Of this amount, the charter fishery harvested 1.812 million lb (821.9 mt) or 71.4 percent and the unguided harvest was 0.725 million lb

(328.8 mt) or 28.6 percent. Hence, the charter harvest exceeded its 2006 Area 2C GHL by 380,000 lb (172.4 mt) or 26.5 percent. This overage is substantially less than ADF&G's preliminary projection of 2006 charter harvests made in October 2006. At that time, ADF&G had preliminary projections indicating that the 2006 charter harvest of halibut could be as much as 2.113 million pounds (958.4 mt) or 47 percent above the Area 2C GHL. The ADF&G preliminary projections of the overage of the GHL in 2006 produced responses in 2007 from the Council and the three management agencies involved: IPHC, NMFS, and ADF&G.

Management Agencies' Response in 2007

At its annual meeting in January 2007, the IPHC adopted a motion to recommend reducing the daily bag limit for anglers on charter vessels in Areas 2C and 3A from two halibut to one halibut during certain time periods. Specifically, for Area 2C, the IPHC recommended that the one-fish daily bag limit should apply to guided anglers from June 15 through July 30. The IPHC recommended this temporary bag limit reduction because it believed its management goals were at risk by the magnitude of the charter halibut harvest in excess of the GHL, especially in Area 2C. This action was not explicitly designed to manage the charter fishery to the Council's GHLS but rather to initiate some control on what appeared to be a constantly increasing charter vessel harvest. The IPHC took this action reluctantly. It stated that its preference was for the Council to resolve the allocation issue between the sport charter and commercial sectors. Moreover, it delayed the effective date of the reduced bag limit to June 15 to afford the Secretary time to resolve the issue under U.S. domestic law with regulations that would achieve "comparable reductions" in halibut harvest by the charter vessel fishery.

In a letter to the IPHC on March 1, 2007, the Secretary of State, with concurrence from the Secretary, rejected the recommended one-fish daily bag limit in Areas 2C and 3A, and indicated that appropriate reduction in the charter vessel harvest in these areas would be achieved by a combination of ADF&G and NMFS regulatory actions. For Area 2C, the State of Alaska Commissioner of Fish and Game (hereafter, State Commissioner) issued an emergency order to prohibit retention of fish by charter vessel guides and crew members (No. 1-R-02-07). This emergency order was similar to one issued for 2006. This action was intended, in conjunction

with other measures, to reduce the 2007 charter vessel harvest of halibut to levels comparable to the IPHC-recommended bag limit reduction which was estimated to range from 397,000 (180.1 mt) pounds to 432,000 pounds (195.9 mt).

Regulatory action to remedy this problem by June 2007 required the Secretary, through NMFS, to develop regulations independent of the Council process. The analysis of alternative restrictions had an explicit goal of finding the best alternative that would reduce sport fishing mortality of halibut in the charter vessel sector in Area 2C to a level comparable to the level that would have been achieved by the IPHC-recommended regulations and in a manner that would minimize adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. The preferred alternative selected by NMFS maintained the traditional two-fish daily bag limit provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that fish may be of any length. Regulations implementing this partial maximum size limit were published on June 4, 2007 (72 FR 30714).

The Council also was considering management alternatives for the charter vessel halibut fishery in Area 2C during the first half of 2007. Unlike the IPHC, ADF&G, and NMFS actions, however, the Council's alternatives were designed specifically to maintain the charter vessel fishery to its GHL. In June 2007, the Council adopted a preferred alternative that contained two options. The Council recommended that the selection between the options depend on whether the CEY decreases substantially for 2008. As explained above, the GHLs for Area 2C and 3A are linked to the CEY determined annually by the IPHC as a basis for setting the commercial fishery catch limits in these areas. A substantial decrease in the CEY could cause the GHL for Area 2C to decrease from its current 1.432 million lb (649.5 mt) to 1.217 million lb (552.0 mt). Not knowing in June 2007 how the GHL may be affected by IPHC action in January 2008, the Council recommended a suite of charter vessel fishery restrictions if the GHL remains the same in 2008 (Option A) and a different, more restrictive, suite of restrictions if the GHL decreases in 2008 (Option B). This Council recommendation is the basis for this proposed regulatory action.

The Proposed Action

As recommended by the Council in June 2007, this action proposes management measures to reduce the charter vessel fishery harvest of halibut in Area 2C to the GHL under two scenarios—Option A if the GHL for this area remains the same in 2008, and Option B if the GHL decreases in 2008. NMFS encourages public comment on all regulatory options to maximize the ability of NMFS to achieve the intent of the Council to limit the catch of the guided sport charter vessel fishery in Area 2C to the GHL while minimizing the adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. In brief, the specific options recommended by the Council are as follows:

Option A management measures for the charter vessel halibut fishery in Area 2C.

- Two fish daily bag limit provided that one fish is no more than 32 inches (81.3 cm) in length (existing regulation at 50 CFR 300.65(d));
- A charter vessel guide, a charter vessel operator, and crew of a charter vessel must not catch and retain halibut during a charter fishing trip;
- The number of lines used to fish for halibut must not exceed six or the number of charter vessel anglers onboard the charter vessel, whichever is less; and
- The combined number of halibut that may be harvested by a charter vessel angler in Area 2C during a calendar year must not exceed four fish.

Option B management measures for the charter vessel halibut fishery in Area 2C.

- The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day;
- A charter vessel guide, a charter vessel operator, and crew of a charter vessel must not catch and retain halibut during a charter fishing trip; and
- The number of lines used to fish for halibut must not exceed six or the number of charter vessel anglers onboard the charter vessel, whichever is less.

Option A Management Measures

The following management measures were recommended by the Council if the GHL remains unchanged in 2008. If implemented, the proposed regulations would remain in effect until changed by a new Federal regulatory action.

Daily bag and maximum size limit.
The existing regulation (at 50 CFR

300.65(d)) in effect since June 1, 2007 (72 FR 30714, June 4, 2007), reads as follows:

In Commission Regulatory Area 2C, halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm). If a person sport fishing on a charter vessel in Area 2C retains only one halibut in a calendar day, that halibut may be of any length.

Before June 1, 2007, the daily catch limit applicable to charter vessel anglers was the same as that which applies to all sport fishing for halibut in Alaska, which is two halibut of any size per person. This two-fish daily bag limit for sport fishermen is an IPHC regulation (section 25(2)(b) at 72 FR 11801; March 14, 2007) first imposed in 1975. The NMFS regulation in June 2007 simply supplemented the traditional two-fish bag limit with the additional requirement that one of the two fish must be no more than 32 inches (81.3 cm) in length. If only one halibut is retained, it may be of any length.

No substantive change in this requirement is proposed by Option A. Minor changes in the text are proposed, however, due to other changes proposed in this action. Specifically, § 300.65(d) would have a new heading that would move the text currently at § 300.65(d) to § 300.65(d)(1), and that would have a new heading specifying “daily bag limit in Area 2C.” As a result, the existing introductory phrase, “In Commission Regulatory Area 2C” would be removed as redundant. In addition, the second sentence of the paragraph would be changed by substituting the phrase, “If a charter vessel angler” for the existing phrase “If a person sport fishing on a charter vessel in Area 2C.” This change is proposed because a new definition of “charter vessel angler” is proposed and reiterating “in Area 2C” is unnecessary due to the new paragraph heading that already makes clear the geographic application of the regulation.

No harvest by skipper and crew. A new Federal restriction is proposed prohibiting the harvest of halibut by the charter vessel guide, the charter vessel operator, and the charter vessel crew during a charter vessel fishing trip. The language of the Council's motion adopting this recommendation reads, “no harvest by skipper and crew when clients are on board the charter vessel.” Although a sport fishing guide on a charter vessel in Area 2C is likely to be the same person as the “skipper,” captain, or operator of the vessel, in some cases the skipper and guide could be different persons. Hence, this proposed rule makes clear the Council's

intent of applying this restriction to all persons-guide, skipper or operator, and crew-involved with the delivery of onboard services to the charter vessel angler.

The proposed regulation deviates from the Council's adopted motion language also in that the phrase "when clients are on board" is not used in the proposed regulation. Instead, the proposed regulation would limit the skipper and crew harvesting prohibition to a charter vessel fishing trip. A new definition is proposed in this action for "charter vessel fishing trip" which describes the period from the first deployment of fishing gear from a charter vessel until the offloading of any charter vessel angler or halibut. Also, an existing definition of "charter vessel" (at § 300.61) describes such a vessel as one "used for hire in sport fishing for halibut, but not including a vessel without a hired operator." Hence, the effect of the proposed regulation would be the same as that intended by the Council, which is to prohibit retention of halibut caught by the guide, skipper, and crew on a charter vessel, but not to impose this restriction when no clients or charter vessel anglers are onboard. A vessel without clients or paying anglers onboard is, by definition, not a charter vessel. Therefore, guides, skippers, and crew would not be prevented from sport fishing for halibut for themselves when they are not on a charter vessel fishing trip.

The Council recommended this restriction to make it more specific to halibut harvest on charter vessels in Area 2C. As discussed above, the State Commissioner's emergency order prohibiting the retention of all fish by the skipper and crew of a charter vessel in Area 2C was implemented in 2007. The State Commissioner could not make his emergency order apply only to halibut because he has no authority under the Halibut Act to directly regulate halibut fishing. A comprehensive application of the emergency order to all fish effectively prevented charter vessel skippers and crews from harvest of salmon, rockfish, lingcod, and other species. Charter vessel operators requested relief from this comprehensive prohibition on skipper and crew harvests by having a Federal prohibition on skipper and crew harvest apply only to halibut. Assuming that the State Commissioner does not reissue his earlier emergency order for other reasons, this action would relieve charter vessel skippers and crew from the more comprehensive prohibition against retention of all fish on charter vessels but would impose this prohibition on the retention of halibut.

The Council's original analysis of alternatives, prepared for its meeting in June 2007, indicated that the daily bag/maximum size limit and prohibition on skipper/crew harvest of halibut together would reduce the charter vessel harvest in Area 2C to 115 percent to 106 percent of the GHL (Table 15 in EA/RIR/IRFA, see **ADDRESSES**). The fact that these management measures would fall short of achieving the GHL is not surprising as they were designed by NMFS and ADF&G and implemented in 2007 for a different purpose-not to achieve the GHL, but instead to reduce charter vessel halibut harvests to a comparable extent to what would have been realized under the IPHC recommendation.

In October 2007, ADF&G published its final estimate of charter vessel harvests in Area 2C. This final estimate indicated fewer halibut were being harvested by the charter vessel sector in 2006 than had been preliminarily estimated by ADF&G a year earlier. In fact, the revised ADF&G estimate for 2006 showed the first decrease in the growth of halibut pounds harvested by charter vessels since 1999. The agency's preliminary estimate of the 2006 charter vessel halibut harvest in Area 2C in October 2006 of 2.113 million lb (958.4 mt) was reduced in its final estimate in October 2007 to 1.812 million lb (821.9 mt). The Council staff subsequently reviewed its analysis in light of these new harvest data for 2006 and submitted a supplement to the EA/RIR/IRFA (Appendix IV to the EA/RIR/IRFA, see **ADDRESSES**). The supplement revises Table 15 (Table A4-1 in Appendix IV). This table estimates the impact of each management option under the action alternative on the total amount of halibut harvested by the sport charter vessel fishery in 2006 relative to the current GHL if that management option had been in place in 2006. The revised analysis indicates that the daily bag/maximum size limit and prohibition on skipper/crew harvest of halibut together would reduce the charter vessel harvest in Area 2C to a range of 101 percent to 93 percent of the GHL. By weight, this expected harvest would be in the range of 1.448 million lb (656.8 mt) to 1.333 million lb (604.6 mt). This range would bracket the current GHL in Area 2C which is 1.432 million lb (649.5 mt). It is important to note that although the daily bag/maximum size limit and prohibition on skipper/crew harvest of halibut together would appear from the analysis to achieve the GHL, the analysis does not account for possible changes in fishing effort between 2006 and 2008.

When ADF&G presented its final estimate of the 2006 charter vessel

harvest to the Council in October 2007, the Council decided not to reconsider its June 2007 recommendation which this action proposes to implement with Federal regulations. However, NMFS is particularly interested in public comment on these proposed regulations in light of the new final estimate of 2006 harvests of halibut by the charter vessel sector and the revised analysis of the potential effect of the proposed management measures, as indicated in the above paragraph. The intent of particularly soliciting public comment on this and other specific issues in this action is to maximize the ability of NMFS to achieve the intent of the Council to limit the catch of the guided sport charter vessel fishery in Area 2C to the GHL while minimizing the adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. Based on public comment, and to achieve the intent of the Council and minimize adverse impacts, NMFS may implement either Option A or Option B in their entirety, or some portion of either option.

Line limits. A new Federal restriction is proposed that would limit the number of lines that could be fished from a charter vessel to six or the number of charter vessel anglers onboard the charter vessel, whichever is less. The existing IPHC gear limitation for a person sport fishing for halibut is a single line with no more than two hooks attached, or a spear (section 25(1) at 72 FR 11801). Hence, this restriction would prevent more than six charter vessel anglers on a vessel from fishing at the same time. This restriction is not viewed as onerous, however, because the charter vessels and charter vessel skippers in Southeast Alaska (Area 2C) typically are licensed by the U.S. Coast Guard to carry no more than six passengers. In addition, existing State of Alaska regulations (at 5 AAC 47.030(b)) limit the number of lines fished from a charter vessel generally to the number of clients onboard the vessel. A six-line limit has been in Alaska regulations since 1983, and limiting the number of lines fished to the number of clients onboard has been a requirement since 1997. The proposed line limits would reflect the existing Alaska regulations in Federal regulations specifically for halibut fishing.

Annual catch limit. The proposed annual catch limit of four halibut would impose a new restriction on each charter vessel angler in Area 2C of two daily bag limits of halibut per year. A sport fishing guide or charter vessel operator also would be responsible to know how

many halibut each of his clients had previously harvested on a charter vessel that year and limit a charter vessel angler's harvest if necessary. For example, if a charter vessel angler arrives for a charter vessel fishing trip, the charter vessel guide would be required, before the trip begins, to record the number of halibut caught and retained year-to-date by each angler on the charter vessel (see discussion of recordkeeping and reporting below). A charter vessel angler who begins the trip with three halibut already harvested that year would be limited to only one additional halibut regardless of the two halibut daily bag limit.

No exceptions are proposed for this annual catch limit. This restriction would apply equally to youth anglers under 16 years of age who are not required to have an Alaska sport fishing license, anglers who are over 60 years of age, and anglers who are disabled veterans, both of which may have special Alaska sport fishing licenses. The proposed annual catch limit, however, would apply only to charter vessel anglers. Halibut harvested by non-guided sport fishermen would not count toward the proposed four-fish annual catch limit. Likewise, a charter vessel angler who has harvested her annual catch limit would be allowed to continue sport fishing for halibut as a non-guided angler subject to the existing two-halibut per day catch limit.

The analysis indicates that the proposed annual catch limit would reduce the charter vessel harvest by an estimated 0.335 million lb (151.9 mt). In conjunction with the other management measures under Option A, the anticipated effect of this restriction would be a reduction in total charter vessel harvests in Area 2C to a range of 84 percent to 78 percent of the current GHl (Table A4–1 of Appendix IV of the EA/RIR/IRFA). In terms of weight, the supplement to the analysis predicts (based on 2006 data) a charter vessel halibut harvest in Area 2C of between

1.208 million lb (547.9 mt) and 1.111 million lb (503.9 mt). Harvests in this range would be less than the current GHl in Area 2C, which is 1.432 million lb (649.5 mt).

The Council considered but did not recommend more liberal annual catch limits of five halibut and six halibut which would allow a total charter vessel harvest in Area 2C closer to the GHl. According to the supplement of the analysis, the predicted harvest under the Option A management measures using a six-halibut annual catch limit instead of a four-halibut annual catch limit would range from 1.386 million lb (628.7 mt) to 1.276 million lb (578.8 mt), and using a five-halibut annual catch limit instead of a four-halibut annual catch limit would range from 1.313 million lb (595.6 mt) to 1.209 million lb (548.4 mt). NMFS is particularly interested in public comment on these annual catch limits (6, 5, and 4 halibut) given the new final estimate of 2006 charter vessel harvest. The intent of particularly soliciting public comment on this and other specific issues in this action is to maximize the ability of NMFS to achieve the intent of the Council to limit the catch of the guided sport charter vessel fishery in Area 2C to the GHl while minimizing the adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. Based on public comment, and to achieve the intent of the Council and minimize adverse impacts, NMFS may implement an annual catch limit of 6, 5, or 4 halibut, or no annual limit.

Recordkeeping and reporting. The Area 2C annual catch limit for charter vessel anglers proposed under Option A would require new recordkeeping and reporting requirements for charter vessel anglers and guides. This information collection is necessary to monitor and enforce the area specific annual catch limit. Charter vessel guides and anglers

are individually and collectively responsible for the accuracy and completeness of recorded information on halibut caught and retained. The Council, NMFS, and ADF&G stressed the importance of minimizing reporting burden on the charter vessel industry and developed a proposed information collection program that allows for the recording of necessary information in the existing ADF&G Saltwater Sport Fishing Charter Trip Logbook and on existing State of Alaska sport fishing licenses or catch cards.

Each charter vessel angler would be required to record on the back of his or her State of Alaska Sport Fishing License or catch card the date and number of halibut caught and retained in Area 2C. This information is necessary to monitor retained catch relative to the annual catch limit and to provide information to a charter vessel guide on the number of halibut retained to date during a calendar year so that the angler's annual catch limit is not exceeded during a charter vessel fishing trip. Each angler who retains halibut catch from Area 2C would be required to retain his or her license or catch card for a period of three years from the date of the latest Area 2C halibut entry. Maintenance of these records is necessary in the event that NMFS Enforcement needs to verify the number of retained halibut catch recorded by the angler or compare an angler's record of retained halibut with the number of retained halibut in Area 2C as recorded by charter vessel guides for that angler in the ADF&G Saltwater Sport Fishing Charter Trip Logbook.

Information recorded in the ADF&G Saltwater Sport Fishing Charter Trip Logbook on the number of halibut caught and retained in Area 2C by each charter vessel angler would be used by NMFS to monitor and enforce the annual catch limit. Specific logbook information requirements are summarized below for charter vessel guides and anglers.

INFORMATION RECORDED IN THE ADF&G SALTWATER SPORT FISHING CHARTER TRIP LOGBOOK

Who records the information?	What information is recorded?	Purpose of information collection
Charter vessel guide.	Sport fish charter business license number issued by ADF&G to a person that owns or employs the charter vessel. The charter vessel guide license number issued by ADF&G to the guide that led the fishing trip. IPHC regulatory area fished—circle either regulatory area 2C or 3A where halibut were caught and retained. Separate logbook sheets must be completed if both areas were fished during the same charter vessel fishing trip. Angler sport fishing license number and printed name; the printed name and date of birth is recorded for each youth angler under 16 years of age.	To provide the identity of the charter vessel business owner and guide who are mutually and severally responsible for accurate recordkeeping and reporting of charter vessel angler harvest of halibut in Area 2C. To verify that charter vessel fishing did or did not occur in Area 2C where an annual catch applies. The catch and retention of halibut in Area 2C triggers additional recordkeeping and reporting requirements. To record the identity of charter vessel anglers subject to the annual catch limit.

INFORMATION RECORDED IN THE ADF&G SALTWATER SPORT FISHING CHARTER TRIP LOGBOOK—Continued

Who records the information?	What information is recorded?	Purpose of information collection
	From each angler's ADF&G sport fishing license or catch card, the total number of halibut caught and retained in the current year-to-date aboard a charter vessel in Area 2C.	To provide the charter vessel guide information on the number of halibut each angler is allowed to retain during the fishing trip so that halibut are not retained in excess of each angler's annual catch limit.
	The total number of halibut caught and retained in Area 2C aboard a charter vessel during the current year-to-date from each charter vessel angler's sport fishing license or catch card.	This information currently is required by ADF&G to estimate sport fish harvest of halibut and the proposed Federal requirement will be used to monitor angler-specific compliance with the annual catch limit.
	Signature of the charter vessel guide	Guide's acknowledgement that the recorded information is correct.
Charter vessel angler.	Signature of the charter vessel angler	Angler's acknowledgement that his or her Area 2C halibut retention information is correctly recorded.

The ADF&G Saltwater Sport Fishing Charter Trip Logbook data sheets would be required to be submitted to the appropriate ADF&G office and according to the time schedule described in the instructions at the beginning of the logbook.

Option B Management Measures

The following management measures were recommended by the Council if the GHLL decreases in Area 2C in 2008 to 1.217 million lb (552.0 mt). If implemented, the proposed regulations would remain in effect until changed by a new Federal regulatory action.

One-fish daily bag limit. This restriction would substitute a daily catch limit for a charter vessel angler of one halibut per day of any size for the existing daily catch limit of two halibut per day providing one of the two fish is no longer than 32 inches (81.3 cm). This restriction would be more onerous than the management measures described above under Option A. The Council reasoned that this more restrictive action would be necessary if the GHLL in Area 2C were to decrease in 2008 to 1.217 million lb (552.0 mt). In conjunction with the proposed restrictions on harvest by skipper and crew and line limits, the Option B management measures are estimated to reduce the charter vessel harvest to a range of 76 percent to 53 percent of the current Area 2C GHLL, or to a range of 63 to 89 percent of the reduced GHLL. By weight, the estimated effect of the Option B management measures would be to allow a charter vessel harvest of from 1.089 million lb (494.0 mt) to 0.762 million lb (345.6 mt).

No harvest by skipper and crew. This restriction would be the same as that described above under Option A.

Line limits. This restriction would be the same as that described above under Option A.

Classification

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on directly regulated small entities. A copy of this analysis and its updated supplement are available from NMFS (see **ADDRESSES**). A description of this action, why it is being considered, and the legal basis for this action are discussed above. The proposed action would implement one of two management options—Option A or Option B, or portions thereof, as described above—for the charter vessel halibut fishery in Area 2C. A summary of the analysis follows.

In 2006, 696 vessels operated as charter vessels in Area 2C. All of these operations are believed to be small entities, with annual gross revenues of less than the limit of \$6.5 million dollars for charter vessels. The largest companies involved in the fishery, lodges or resorts that offer accommodations as well as an assortment of visitor activities, may be large entities under the Small Business Administration size standard. Key informant interviews have indicated that the absolute largest of these companies may gross more than \$6.5 million per year, but that it was also possible for all of the entities involved in the charter vessel halibut of harvest to have grossed less than this amount. The number of small entities is likely to be overestimated because of the limited information on vessel ownership and operator revenues. However, it is likely that nearly all entities qualify as small businesses.

The demand for sport fishing on charter vessels depends on a number of factors including the number of halibut a charter vessel angler may catch and retain in a year or in a day. The

proposed annual catch limit on charter vessel anglers under Option A may reduce demand for trips that target halibut. An annual catch limit may reduce the demand for multi-day trips and affect remote fishing lodges more than day-trip operators. Other species of bottom fish and salmon also are targeted by charter vessels. Some charter vessel operators also may have non-fishing business taking passengers for whale watching, bird watching or general sightseeing trips. A larger effect on the demand for charter vessel fishing trips may be experienced under reduced GHLL, which would impose a one-halibut daily catch limit under Option B. The current daily catch limit is two halibut per day providing one of the fish is no more than 32 inches (81.3 cm) in length.

Prohibiting the harvest of halibut by charter vessel guides and crew may reduce their overall compensation because the ability to harvest fish while working is sometimes considered part of their compensation. As discussed above, the State Commissioner has issued an emergency order in recent years to prohibit retention of fish by charter vessel guides and crew members (No. 1–R–02–07). This emergency order was comprehensive in that all fish were covered by the emergency order, and not just halibut. A Federal prohibition on charter vessel guide and crew harvest of halibut in Area 2C would be specific to halibut and therefore would be less restrictive and have less of an economic impact than has been experienced under the current State of Alaska emergency order.

Little information is available on charter vessel operations or on how charter vessel anglers and operators may respond to proposed changes. It is not possible to predict quantitatively the impact on gross or net revenues, or on entry or exit from the industry. This proposed action is expected to reduce the amount of halibut harvested by

charter vessels relative to what they have harvested in recent years. The regulatory burden is expected to be highest for the smallest firms, those involved in multiple trips per day, those who offer multiday packages, and those who are unable to target species other than halibut. These operators may face reduced profits or losses. Key informant interviews indicated that profit margins in the industry are small for some operators and that the proposed management options could reduce or eliminate those margins and force some operators out of business.

NMFS has examined two alternatives to this action: the no-action or status quo alternative, and the action alternative. Alternative 1, the status quo, would retain the two-fish bag limit with one of the two fish less than or equal to 32 inches (83.1 cm) in length, without changes. Alternative 2, the action alternative, considered 13 options for different combinations of management measures to restrict the charter halibut harvest to the Area 2C GHL. The options included limiting vessels to one trip per day; restricting harvest by guide and crew while clients are onboard; limiting the number of lines to six per vessel, not to exceed the number of paying clients onboard; daily bag limits of one or two fish (including sub-options for size limit slots and specific months when the bag limit would apply); and annual harvest limits of four, five, or six fish per charter angler. Two preferred options (Option A and Option B) were selected by considering different combinations of management measures that would minimize the impacts on small entities while still meeting the management objective of restricting the charter vessel harvest of halibut to the GHL.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule complies with the Halibut Act and the Secretary's authority to implement allocation measures for the management of the halibut fishery.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average five minutes per response. The public reporting burden for charter vessel anglers to sign the logbook, record the number of halibut caught and retained in Area 2C on an Alaska Sport Fishing License or catch card, and retain

that document is estimated to average 2 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed action is consistent with E.O. 12962 which directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities "to the extent permitted by law and where practicable." This E.O. does not diminish NMFS's responsibility to address allocation issues, nor does it require NMFS or the Council to limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries. This proposed rule does not diminish that productivity or countermand the intent of E.O. 12962.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: December 21, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773-773k.

Subpart E—[Amended]

2. In § 300.61, add definitions for "Area 3A", "Charter vessel angler", "Charter vessel fishing trip", and "Charter vessel guide" in alphabetical order to read as follows:

§ 300.61 Definitions.

* * * * *

Area 3A means all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true.

* * * * *

Charter vessel angler means a person, paying or nonpaying, using the services of a charter vessel guide.

Charter vessel fishing trip means the time period between the first deployment of fishing gear into the water from a charter vessel and offloading one or more charter vessel anglers or any halibut from the charter vessel.

Charter vessel guide means a person who has been issued an annual guide license by the Alaska Department of Fish and Game.

* * * * *

3. In § 300.65, revise paragraph (d) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

OPTION A

* * * * *

(d) *Guideline harvest level management measures*—(1) *Daily bag limit in Area 2C.* Halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

(2) *Charter vessel guide and crew restriction in Area 2C.* A charter vessel guide, a charter vessel operator, and crew of a charter vessel must not catch and retain halibut during a charter vessel fishing trip.

(3) *Line limit in Area 2C.* The number of lines used to fish for halibut must not exceed six or the number of charter vessel anglers onboard the charter vessel, whichever is less.

(4) *Annual limit in Area 2C.* The combined number of halibut that may be harvested by a charter vessel angler in Area 2C during a calendar year must not exceed four fish.

(5) *Recordkeeping and reporting requirements in Area 2C.* The following information must be recorded by charter vessel anglers and charter vessel guides for each charter vessel fishing trip in Area 2C:

(i) *Charter vessel angler requirements—(A) State of Alaska Sport Fishing License.* Each charter vessel angler, including a youth angler under 16 years of age and an angler over 60 years of age, who retains halibut caught in Area 2C must record on the back of his or her State of Alaska Sport Fishing License or catch card the date and number of halibut caught and retained in Area 2C.

(B) *Retention requirements.* A State of Alaska Sport Fishing License or catch card with a record of halibut caught and retained in Area 2C must be retained by the individual named on the license or catch card for a period of three years from the date of the latest Area 2C halibut entry.

(C) *Angler signature.* At the end of a charter fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut kept are recorded correctly by signing the back of the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line number that corresponds to the angler's information on the front of the logbook data sheet.

(ii) *Charter vessel guide requirements.* For each charter vessel fishing trip in Area 2C, the charter vessel guide leading the charter vessel fishing trip is required to record the following information in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

(A) *Business owner license number.* The sport fish charter business license number issued by the Alaska Department of Fish and Game to a

person who owns or employs the charter vessel.

(B) *Guide license number.* The charter vessel guide license number issued by the Alaska Department of Fish and Game to the charter vessel guide that led the fishing trip and certified the logbook data sheet.

(C) *Date.* Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and kept during a multi-day trip.

(D) *Regulatory area fished.* Circle the regulatory area (Area 2C or Area 3A) where halibut were caught and kept during each charter vessel fishing trip. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

(E) *Angler sport fishing license number and printed name.* Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler onboard that will fish for halibut. Record the name and date of birth of each youth angler under 16 years of age.

(F) *Year-to-date halibut caught.* Before a charter vessel fishing trip begins, record the total number of halibut caught and retained in the current year to date aboard a charter vessel in Area 2C for each charter vessel angler from his or her sport fishing license or catch card.

(G) *Number of halibut retained.* For each charter vessel angler, record the number of halibut caught and retained during the charter vessel fishing trip.

(H) *Signature.* At the end of a charter vessel fishing trip, acknowledge that the recorded information is correct by signing the logbook data sheet.

(I) *Angler signature.* Charter vessel guide is responsible for ensuring that anglers comply with the signature requirements at § 300.65(d)(5)(i)(C).

(6) *Recordkeeping and reporting requirements in Area 3A.* For each charter vessel fishing trip in Area 3A, the charter vessel guide leading the charter vessel fishing trip is required to record the regulatory area (Area 2C or Area 3A) where halibut were caught and kept by circling the appropriate area in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

(7) *Logbook submission.* Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the appropriate Alaska Department of Fish and Game office according to the time schedule printed in the instructions at the beginning of the logbook.

* * * * *

OPTION B

* * * * *

(d) *Charter vessels in Area 2C—(1) Daily bag limit.* The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

(2) *Charter vessel guide and crew restriction.* A charter vessel guide, a charter vessel operator, and crew of a charter vessel must not catch and retain halibut during a charter fishing trip.

(3) *Line limit.* The number of lines used to fish for halibut must not exceed six or the number of charter vessel anglers onboard the charter vessel, whichever is less.

* * * * *

4. In § 300.66, add paragraphs (n), (o), and (p) to read as follows:

§ 300.66 Prohibitions.

* * * * *

(n) Exceed any of the harvest or gear limitations specified at § 300.65(d).

(o) Fail to comply with the requirements at § 300.65(d).

(p) Fail to submit or submit inaccurate information on any report, license, catch card, application or statement required under § 300.65.

[FR Doc. E7–25407 Filed 12–28–07; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 72, No. 249

Monday, December 31, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Foreign Travel Proposal

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Foreign Travel Proposal.

DATES: Comments must be received in writing on or before February 29, 2008 to be assured of consideration.

Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, U.S. Department of Agriculture, International Programs, Travel Section, 1099 14th Street, NW., Washington, DC 20050.

Comments also may be submitted via facsimile to 540-659-4670 or by e-mail to: sfarber@fs.fed.us.

The public may inspect comments received at 1099 14th St., NW., Room 5500W, Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202-273-4695 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Sandra Farber, Forest Service, U.S. Department of Agriculture, International Programs, Travel Section, 540-659-2973. Individuals who use TDD may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Foreign Travel Proposal.

OMB Number: 0596-New.

Type of Request: New.

Abstract: The Forest Service is seeking approval to collect information from individuals traveling to foreign countries on behalf of the Agency. The

collection of this information is necessary to facilitate timely issuance of foreign travel authorizations, including the release, issuance, and/or renewal of official United States government passports; issuance of necessary visas; and country clearance. Forest Service, U.S. Department of Agriculture, International Programs Travel Section uses FS-6500-1, Foreign Travel Proposal, to collect the information.

Information collected includes the traveler's destination, purpose of trip, and dates of travel. Also collected are name, address, contact telephone numbers, birth date and place, social security numbers, passport information, security clearance, as well as contacts at each destination and hotel information. Analysis of the information for accuracy is routine.

Use of the information provided by the traveler or their designee depends upon circumstances. Name, place of birth, and passport goes to each destination's United States embassy via a country clearance cable and is necessary to obtain the embassy's approval of travel. Security clearance is necessary to allow the traveler entry to specific areas within United States embassies abroad. The embassies use the destination information for contact purposes, and it is for the safety of the traveler.

Without collection of this information, the Forest Service cannot provide support to international programs or other countries who have requested assistance. Collection of this information occurs each time a non-federal traveler requests approval for foreign travel on behalf of the Forest Service. The International Programs Travel Section does maintain files beyond the end of each trip. Shredding of records containing the collected information occurs upon the completion of the associated trip.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Personal services agreement employees, personal services contractors, contractors, and volunteers.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6.25 hours.

Comment is invited on: (1) Whether this collection of information is

necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 17, 2007.

Abigail R. Kimbell,

Chief, Forest Service.

[FR Doc. E7-25408 Filed 12-28-07; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2008; Maximum Portion of Guarantee Authority Available for Fiscal Year 2008; Annual Renewal Fee for Fiscal Year 2008

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR 4279.107(b) and 4280.126(c), Rural Development (the Agency) has the authority to charge an annual renewal fee for loans made under the Business and Industry (B&I) Guaranteed Loan Program and the Renewable Energy and Energy Efficiency Improvements (9006) Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-fourth of 1 percent for the B&I Guaranteed Loan Program and one-fourth of 1 percent for the 9006 Guaranteed Loan Program. These rates will apply to all loans obligated in fiscal year (FY) 2008 that are made under the

cited programs. As established in 7 CFR 4279.107 and 4280.126, the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

As set forth in 7 CFR 4280.126(a), each fiscal year the Agency shall establish the initial guarantee fee rate for loans made under the 9006 Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the initial guarantee fee rate at 1 percent for loans made in FY 2008.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a B&I guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious. For 1 percent fees, the borrower's business supports value-added agriculture and results in farmers benefiting financially, or such projects are high impact as defined in 7 CFR 4279.155(b)(5) and located in rural communities that remain persistently poor, which experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster, or are experiencing fundamental structural changes in its economic base. For guaranteed loans exceeding 80 percent, such projects must be a high-priority project in accordance with 7 CFR 4279.155.

Not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits in 7 CFR part 4279. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBank) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. Up to 50 percent

of CAIP loans may have a guaranteed percentage exceeding 80 percent. The funding authority for CAIP loans is not derived carryover or recovered funding authority of the B&I Guaranteed Loan Program.

EFFECTIVE DATE: December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, USDA, Rural Development, Business Programs, Business and Industry Division, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224, telephone (202) 720-7818.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 as amended by Executive Order 13258.

Dated: December 21, 2007.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E7-25352 Filed 12-28-07; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-820]

Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from petitioners¹ and respondents,² the Department of Commerce (the Department) is conducting an administrative review of the antidumping order on certain hot-rolled carbon steel flat products from India (hot-rolled carbon steel). This review covers four manufacturers and exporters (respondents) of the subject merchandise: Ispat, Tata, JSW, and Essar. The Department has preliminarily determined that during the period of review (POR), JSW made sales of subject merchandise at less than normal value (NV). The Department has also preliminarily determined that no dumping margin or a *de minimis* dumping margin exists for Ispat, Tata and Essar during the POR. If these

¹ The petitioners are Nucor Corporation (Nucor), Mittal Steel U.S.A. Inc., and United States Steel Corporation (U.S. Steel) (collectively, petitioners).

² Respondents are Ispat Industries Limited (Ispat), Essar Steel Limited (Essar), JSW Steel Limited (JSW), and Tata Steel Limited (Tata) (collectively, respondents).

preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

EFFECTIVE DATE: December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett (Ispat), Joy Zhang (Tata), Stephanie Moore (JSW) or Victoria Cho (Essar), AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4161, (202) 482-1168, (202) 482-3692, and (202) 482-5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the antidumping duty order on hot-rolled carbon steel. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 60194 (December 3, 2001) (*Amended Final Determination*). On December 1, 2006, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on hot-rolled carbon steel. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 69543 (December 1, 2006).

Petitioners requested a review of Essar, Ispat, Tata, Essar, and JSW self-requested a review of the antidumping duty order on hot-rolled carbon steel. On February 2, 2007, the Department published a notice of initiation of the administrative review of the antidumping duty order on hot-rolled carbon steel, covering the period December 1, 2005 to November 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007).

On February 21, 2007, the Department issued an antidumping questionnaire to Ispat, Tata, JSW, and Essar. The Department received responses to the original questionnaires from Ispat, Tata, JSW, and Essar. The Department subsequently issued supplemental questionnaires to all parties and received responses to the same.

On August 30, 2007, the Department published a notice extending the time

period for issuing the preliminary results of the administrative review from September 2, 2007, to December 19, 2007. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 50098 (August 30, 2007).

Period of Review

The POR covered by this review is December 1, 2005, through November 30, 2006.

Scope of the Order

The merchandise subject to this order is hot-rolled carbon steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum-degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high-strength low-alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or

- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot-rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506)).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- United States Steel (USS) Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00,

7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel covered by this order, including: vacuum-degassed fully stabilized; high-strength low-alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Affiliation

On June 13, 2007 and on October 31, 2007, Nucor alleged that JSW's ownership and affiliations, as part of the O.P. Jindal Group, are not accurately reflected on the record, and that JSW has a close-supplier and a debt financing relationship with another steel company that rises to the level of control.³ Therefore, Nucor argues that pursuant to section 771(33) of the Tariff Act of 1930, as amended (the Act), JSW has two affiliations, 1) JSW with the O.P. Jindal Group, and 2) JSW and another steel company.

Regarding JSW's affiliations with the O.P. Jindal Group, information on the record shows that the group is comprised of nine business sectors headed by four brothers. JSW's financial statements and notes thereto list some of the other O.P. Jindal Group companies as related parties. Also, JSW submitted consolidated financial highlights of the Group. Thus, by virtue of the familial relationships of the companies' owners, they are affiliated under sections 771(33)(A) and (F) of the Act, as they are under the common control of a family group. *See also* 19 CFR 351.102.

Nucor claims that the Department should collapse JSW and the O.P. Jindal Group. *See* October 31, 2007, submission at page 14. The Department finds that the record facts do not provide a basis for collapsing JSW and

³ Because the identity of this company, and related information, is business proprietary, *see* Memorandum to Melissa Skinner, Office Director, through James Terpstra from the Team regarding JSW Affiliation Issue (JSW Affiliation Memorandum), dated December 19, 2007, for a detailed discussion.

other entities in the O.P. Jindal Group. Pursuant to 19 CFR 351.401, the Department collapses the operations of producers into a single entity when: 1) the producers are affiliated, 2) the producers have production facilities which would not require substantial retooling for producing similar or identical products, and 3) there is a significant potential for manipulation of price or production. In this instant case, the record shows that JSW is affiliated with the companies that comprise the O.P. Jindal Group, and is the only company in the group that produces and sells subject merchandise. The evidence on the record indicates that the other companies in the Group have production facilities which would require substantial retooling for producing similar or identical products. Accordingly, the criteria for collapsing JSW into the O.P. Jindal Group has not been satisfied. For these reasons, for purposes of the preliminary results, we are not treating JSW and the O.P. Jindal Group as a single entity. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40452–54 (July 29, 1998).

In support of its allegations regarding the affiliation between JSW and another steel company, Nucor provides copies of newspaper articles referring to different transactions involving JSW, the other steel company and/or other parties. As discussed in detail in the JSW Affiliation Memorandum, we preliminarily find that JSW is not affiliated with the other steel producer. We find that the articles submitted by Nucor do not establish that JSW and this company are affiliated. In accordance with 19 CFR 351.102(b), the Department may find that control exists when one person is legally or operationally in a position to exercise restraint or direction over the other person and the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. Nucor has not clearly explained or provided sufficient information supporting the factual basis for a “close supplier relationship” or a “debt financing relationship,” or why such relationships would cause a finding of control. The standard is not whether one company might be in a position to become reliant upon another by means of their supplier-buyer relationship; rather the Department must find that a situation exists where the buyer has, in fact, become reliant on the seller, or vice versa. Only if we make such a finding can we address the issue of whether one

of the parties is in a position to exercise restraint or direction over the other. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997). The information on the record does not show that JSW is reliant upon the other steel company, or vice versa.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all hot-rolled carbon steel produced by the respondents, covered by the scope of the order, and sold in the home market during the POR to be foreign like product for the purpose of determining appropriate product comparisons to hot-rolled carbon steel sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department’s antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the Appendix V physical characteristics reported by each respondent. Where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons.

Fair Value Comparisons

To determine whether sales of hot-rolled carbon steel by the respondents to the United States were made at less than NV, we compared the constructed export price (CEP) or export price (EP) to the NV, as described in the “Constructed Export Price/Export Price” and “Normal Value” sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price/Constructed Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United

States, as adjusted under subsection (c).” During the POR, Ispat, JSW and Essar produced and sold subject merchandise to the first unaffiliated purchaser in the United States prior to importation. For these sales of subject merchandise, we have applied the EP methodology.

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” During the POR, Tata and Essar also had CEP sales because, through their affiliates in the United States, they sold subject merchandise to the first unaffiliated purchaser in the United States after the date of importation of the merchandise. Thus, we have applied the CEP methodology to these sales.

We based EP and CEP on the packed price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for billing adjustments. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. Accordingly, we made deductions for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, U.S. brokerage and handling, and U.S. customs duties. In addition, in accordance with section 772(c)(1)(C) of the Act, when appropriate, we increased EP or CEP, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed administrative review of the countervailing duty order applicable to the POR for Ispat and Essar. For JSW and Tata, we used the countrywide rate from the investigation.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824,⁴ we deducted from the CEP the selling expenses associated with economic activities occurring in the United States, which consisted of credit expenses and commissions. In accordance with section 772(d)(1) of the Act, we also deducted indirect selling expenses associated with economic activities occurring in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

⁴ See the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H. R. Doc. No. 103-316, vol. 1 (1994).

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold by each respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, in accordance with section 773(a)(6)(B) of the Act, we deducted from the starting price inland freight (offset, where applicable, by freight revenue), inland insurance, and packing. Pursuant to 19 CFR 351.401(c), we deducted rebates and discounts. We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. For comparisons to EP, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance-of-sale adjustments for credit expenses, bank charges and commissions. In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on sales at the same level of trade as the EP. See the "Level of Trade" section below.

For purposes of calculating NV, section 771(16) of the Act defines "foreign like product" as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. When there are no identical products sold in the home market, the products which are most similar to the product sold in the United States are identified. For the non-identical or most similar products which are identified based on the Department's product matching criteria, an adjustment is made to the home market sales price to account for the actual physical differences between the products sold in the United States and the home market. See section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP/EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to 19 CFR 351.412, to determine whether CEP/EP sales and NV sales were at different LOTs, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customers. If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

Essar, Ispat, Tata, and JSW each reported different channels of distribution in the home market; however, based on our analysis of the selling functions performed for each channel, we found one level of trade for each. For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see the December 19, 2007, Preliminary Sales Calculation Memorandum for Ispat (Calculation Memorandum for Ispat); Preliminary Sales Calculation Memorandum for Tata (Calculation Memorandum for Tata); Preliminary Sales Calculation Memorandum for JSW Steel Limited (Calculation Memorandum for JSW), and Preliminary Sales Calculation Memorandum for Essar (Calculation Memorandum for Essar), the public versions of which are on file in the Central Records Unit (CRU), Room B–099 of the main Department building.

Based on these findings, we did not make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412(e) because, as there was only one home market LOT for each respondent, we were unable to identify a pattern of consistent price differences attributable to differences in LOTs (see 19 CFR 351.412(d)). Under 19 CFR 351.412(f), we are preliminarily granting a CEP offset for Tata and Essar because the NV is at a more advanced LOT than the LOT for its U.S. CEP sales.

Cost of Production (COP)

A. Calculation of COP

In the most recently completed administrative reviews in which Essar and Ispat participated, the Department determined that Essar and Ispat sold foreign like product at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. For Essar, see *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) unchanged in the final results, *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006). For Ispat, see *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 22157 (May 3, 2001), unchanged in the final results, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 50406 (October 3, 2001). As a result, the Department determined that there are reasonable grounds to believe or suspect that during the instant POR, Essar and Ispat sold foreign like product at prices below the cost of producing the merchandise. See section 773(b)(2)(A)(ii) of the Act. Therefore, the Department initiated a sales-below-cost inquiry with respect to Essar and Ispat.

We calculated a company-specific COP for Essar and Ispat based on the sum of each Essar's and Ispat's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling expenses, selling, general and administrative expenses (SG&A), and packing costs in accordance with section 773(b)(3) of the Act. We relied on Essar's and Ispat's information as submitted.

B. Test of Home-Market Prices

In determining whether to disregard home market sales made at prices below the COP, as required under sections 773(b)(1)(A) and (B) of the Act, we compared the weighted-average COP to home market sales of the foreign like product and we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices (not including VAT), less any

applicable movement charges, discounts, and rebates.

C. Results of COP Test

Pursuant to section 773(b)(1) of the Act, we may disregard below-COP sales in the determination of NV if these sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP for at least six months of the POR, we determined that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Where prices of a respondent's sales of a given product were below the per-unit COP at the time of sale and below the weighted-average per-unit costs for the POR, we determined that sales were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities."

We tested and identified below-cost home market sales for Ispat and Essar. We disregarded individual below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Calculation Memorandum for Ispat and the Calculation Memorandum for Essar.

Arm's-Length Sales

Tata and Essar reported that they made sales of the foreign like product in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's length. *See* 19 CFR 351.403(c).

To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to

an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 71 FR 45017, 45020 (August 8, 2006), and unchanged in the final results. *See Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007); 19 CFR 351.403(c). Conversely, where we found sales to the affiliated party that did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

Producer/Manufacturer	Weighted-Average Margin
Ispat	0.00 %
Tata	0.24 %
JSW	37.01 %
Essar	0.00 %

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in such briefs or comments and may be filed no later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2). Case and rebuttal briefs and

comments must be served on interested parties in accordance with 19 CFR 351.303(f). Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on a diskette.

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). A hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in the written comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review. The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice). This clarification will apply to entries of subject merchandise during the POR produced by companies included in the final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "all-others" rate if there is no rate for an intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of hot-rolled carbon steel from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by

section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV conducted by the Department, the cash deposit rate will be 38.72 percent, the "all-others" rate established in the LTFV. *See Amended Final Determination*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Verification

The Department intends to conduct sales verifications after these preliminary results for Ispat, Tata, and JSW.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 19, 2007.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E7-25397 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-802]

Extension of Time to Submit Comments Concerning the Initialed Draft Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") and the Russian Federation's Federal Atomic Energy Agency ("Rosatom") have initialed a draft amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Suspension Agreement"). *See Initialed Draft Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Request for Comment*, 72 FR 68124 (December 4, 2007) ("Draft Amendment"). On December 20, 2007, Power Resources, Inc. ("PRI") and Crow Butte Resources, Inc. ("CBR"), U.S. producers of uranium concentrates, requested a one-week extension to the comment period outlined in the Draft Amendment. The Department is granting this request in full.

FOR FURTHER INFORMATION CONTACT:
Sally C. Gannon at (202) 482-0162,
Import Administration, International
Trade Administration, U.S. Department
of Commerce, 14th Street & Constitution
Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1992, the Department suspended the antidumping duty investigation involving uranium from Russia on the basis of an agreement by its government to restrict the volume of direct or indirect exports to the United States in order to prevent the suppression or undercutting of price levels of U.S. domestic uranium. *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

The Suspension Agreement was subsequently amended, by agreement of both governments, on March 11, 1994, October 3, 1996, and May 7, 1997. *See, respectively, Amendment to Agreement*

Suspending the Antidumping Investigation on Uranium from the Russian Federation, 59 FR 15373 (April 1, 1994); Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 FR 56665 (November 4, 1996); and *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997). On July 31, 1998, the Department notified interested parties of an administrative change with respect to the Suspension Agreement. *See Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 63 FR 40879 (July 31, 1998). On November 27, 2007, the Department and Rosatom initialed a new draft amendment to the Suspension Agreement.

Extension Request

The Department provided parties with thirty days from the publication date of the Draft Amendment in the **Federal Register** to submit comments on the proposed amendment. The Draft Amendment published in the **Federal Register** on December 4, 2007, and, therefore, comments were due on January 3, 2008. On December 20, 2007, PRI and CBR requested a one-week extension to the deadline for submitting comments on the proposed amendment. PRI and CBR stated in their submission that the complexity of the Suspension Agreement and Draft Amendment, coupled with the December holiday, necessitate additional time for PRI and CBR to review and analyze the Draft Amendment and submit meaningful comments.

For the reasons stated in PRI's and CBR's submission, the Department is granting this request in full. The comments on the Draft Amendment are now due on January 10, 2008.

Dated: December 21, 2007.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E7-25390 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Withdrawal of Panel Review

AGENCY: NAFTA Secretariat, United
States Section, International Trade

Administration, Department of Commerce.

ACTION: On December 20, 2007, a Notice of Withdrawal of Request for Panel Review of the Changed Circumstances Review and the Complaint regarding Gray Portland Cement and Clinker from Mexico was filed on behalf of Holcim Apasco, S.A. de C.V. and Cementos Apasco, S.A. de C.V. (Secretariat File No. USA-MEX-2007-1904-02).

SUMMARY: Pursuant to the Withdrawal of the Request for Panel Review and the Complaint, the panel review is terminated as of December 20, 2007. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: December 20, 2007.

Caratina L. Alston,
United States Secretary, NAFTA Secretariat.
[FR Doc. 07-6240 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-GT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Worsted Wool Fabrics for Calendar Year 2008

December 21, 2007.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2008 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2008 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 (Public Law No. 106-200), as amended by the Trade Act of 2002 (Public Law 107-210) and the Miscellaneous Trade Act of 2004 (Public Law 108-249), and the Pension Protection Act of 2006 (Public Law 109-280). The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2573.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004 and the Pension Protection Act of 2006, creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTSUS) heading 9902.51.11), the reduction in duty is limited to 5,500,000 square meters in 2008. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTSUS heading 9902.51.15), the reduction is limited to 5,000,000 square meters in 2008. The Miscellaneous Trade Act of 2004 requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate

the quantity of worsted wool fabric imports under the tariff rate quotas.

The Miscellaneous Trade Act also authorized Commerce to allocate a new HTS category, HTS 9902.51.16. This HTS refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment further provides that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States. For HTS 9902.51.16, the reduction in duty is limited to 2,000,000 square meters in 2008.

On January 22, 2001 the Department published interim regulations establishing procedures for applying for, and determining, such allocations (66 FR 6459, 15 CFR 335). These interim regulations were adopted, without change, as a final rule published on October 24, 2005 (70 FR 61363). On September 5, 2007, the Department published a notice in the **Federal Register** (72 FR 50934) soliciting applications for an allocation of the 2008 tariff rate quotas with a closing date of October 5, 2007. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 9 firms. The Department received timely applications for the HTS 9902.51.15 tariff rate quota from 14 firms. The Department received timely applications for the HTS 9902.51.16 tariff rate quota from 1 firm. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

FIRMS THAT RECEIVED ALLOCATIONS

FIRMS THAT RECEIVED ALLOCATIONS: HTS 9902.51.11, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER GREATER THAN 18.5 MICRON, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.60 AND 5112.19.95).

Amount allocated: 5,500,000 square meters.

Companies Receiving Allocation:

Adrian Jules LTD-Rochester, NY
Hartmarx Corporation—Chicago, IL
Hugo Boss Cleveland, Inc-Brooklyn, OH
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Majer Brands Company, Inc.-Old Forge, PA
Saint Laurie Ltd—New York, NY
Sewell Clothing Company, Inc.—Bremen, GA
The Tom James Co.—Franklin, TN

HTS 9902.51.15, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUB-HEADING 5112.11.30 AND 5112.19.60).

Amount Allocated 5,000,000 square meters.

Companies Receiving Allocation:

Adrian Jules LTD—Rochester, NY
 Elevee Custom Clothing—Van Nuys, CA
 Retail Brand Alliance, Inc. d/b/a Brooks Brothers—New York, NY
 Hartmarx Corporation—Chicago, IL
 Hugo Boss Cleveland, Inc.—Brooklyn, OH
 JA Apparel Corp.—New York, NY
 John H. Daniel Co.—Knoxville, TN
 M. Carchedi Custom—Abington, PA
 Majer Brands Company, Inc.—Old Forge, PA
 Martin Greenfield—Brooklyn, NY
 Saint Laurie Ltd—New York, NY
 Sewell Clothing Company, Inc.—Bremen, GA
 Southwick Clothing L.L.C.—Lawrence, MA
 The Tom James Co.—Franklin, TN

HTS 9902.51.16, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING MEN'S AND BOYS SUITS (PROVIDED FOR IN SUB-HEADING 5112.11.30 AND 5112.19.60).

Amount allocated: 2,000,000 square meters.

Company Receiving Allocation:

Warren Corporation—Stafford Springs, CT

Dated: December 21, 2007.

Maria D'Andrea,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc. E7-25399 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-DS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE70

Marine Mammals; File No. 10091

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, 1255 West 8th Street, Juneau, AK, 99811 (Doug Larsen, Responsible Party), has applied in due form for a permit to collect, receive, and import marine mammal specimens for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 30, 2008.

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 Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907) 586-7221; fax (907) 586-7249.

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. 10091.

FOR FURTHER INFORMATION CONTACT:

Amy Sloan or Jennifer Skidmore, (301)713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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 (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to collect, receive, possess, import, and export marine mammal biological specimens (hard and soft parts) from pinnipeds (excluding walrus) and cetaceans to obtain information on population status and distribution, stock structure, age distribution, mortality rates, productivity, feeding habits, and health that can be used for conservation and management purposes. Specimens would be taken from dead animals (beach-cast, subsistence-hunted, or dead incidental to fisheries) or from live animals handled by researchers under

different research permits. No takes from live animals are requested under this permit. The applicant has requested an unlimited number of specimens from less than 1,000 pinnipeds and 500 cetaceans annually. The geographic location for the collection activities would include all coastal areas and open waters of Alaska, including the North Pacific Ocean, Gulf of Alaska, Bering Sea, Chukchi Sea, and Beaufort Sea. Specimens may be imported and exported world-wide to various laboratories and museums for research and curation. The requested duration of the permit is five years.

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: December 21, 2007.

Kate Swails,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-25404 Filed 12-28-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Department of the Air Force

Implementation of the Base Realignment and Closure (BRAC) Final Recommendations and Associated Actions for the 104th Fighter Wing, Massachusetts Air National Guard at Westfield-Barnes Airport, Westfield, MA

AGENCY: Department of the Air Force, National Guard Bureau.

ACTION: Record of decision.

SUMMARY: On December 10, 2007, the United States Air Force signed the Record of Decision (ROD) for Implementation of the BRAC Final Recommendations and Associated Actions for the 104th Fighter Wing, Massachusetts Air National Guard at Westfield-Barnes Airport, Westfield, Massachusetts. The ROD states the Air Force decision to implement the Preferred Alternative (focus aircraft take-offs on Runway 02, which will result in most of the take-offs occurring toward the north of the airport).

The decision was based on matters discussed in the Final Environmental Impact Statement (EIS), inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available on November 2, 2007 in the **Federal Register** (Volume 72, Number 212, Pages 62229–62230) with a wait period ending December 3, 2007. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dogan, National Guard Bureau/A7CVN, Conaway Hall, 3500 Fetchet Avenue, Andrews AFB, MD 20762–5157 or call (301) 836–8859.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–25410 Filed 12–28–07; 8:45 am]

BILLING CODE 5001–05–P

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 February 29, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 21, 2007.

Maria-Teresa Cueva,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New Collection.

Title: College Access Challenge Grant Program (CACGP) Application Information Collection.

Frequency: Annually.

Affected Public: Not-for-profit institutions, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 2,320.

Abstract: The U.S. Department of Education is collecting this information to award College Access Challenge Grant (CACG) funds to States for the administration of quality formula grant projects complying with statutory and regulatory requirements. The purpose of this program is to foster partnerships among Federal, State, and local governments and philanthropic organizations through matching challenge grants that are aimed at increasing the number of low-income students who are prepared to enter and succeed in postsecondary education. The CACGP statute requires States to submit an application containing a description of the capacity to administer grant activities and services, a plan for using formula grant funds to meet the requirements and special efforts to benefit underrepresented students.

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 3548. 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. E7–25339 Filed 12–28–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1278–000; ER07–1278–001; ER07–1278–002]

Alpha Energy Master, Ltd.; Notice of Issuance of Order

December 19, 2007.

Alpha Energy Master, Ltd. (Alpha Energy) 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. Alpha Energy also requested waivers of various Commission regulations. In particular, Alpha Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Alpha Energy.

On December 19, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Alpha Energy, 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 (2007).

Notice is hereby given that the deadline for filing protests is January 18, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Alpha Energy 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 Alpha Energy, 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 Alpha Energy'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 field 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. E7-25327 Filed 12-28-07; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08-97-001]

ANR Pipeline Company; Notice of Corrected Filing

December 20, 2007.

Take notice that on December 17, 2007, ANR Pipeline Company (ANR) tendered for filing an errata to its November 30, 2007 filing in Docket No. RP08-97-000.

ANR states that the filing is being made to correct several schedules in the primary and alternate cases.

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.

Protest Date: 5 p.m. Eastern Time
December 21, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25319 Filed 12-28-07; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-33-000]

Dominion Transmission, Inc.; Notice of Application

December 20, 2007.

Take notice that on December 10, 2007, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct, install, own, operate, and maintain a new 4,740 horsepower compressor station and two miles of 20-inch diameter pipeline in Westmoreland County, Pennsylvania (Dominion Hub I Project) for the purpose of transporting up to 200,000

Dth per day of new gas supplies received from proposed Rockies Express Pipeline LLC facilities to a new interconnection with Texas Eastern Transmission Company LP. DTI proposes to charge a discounted, fixed reservation charge for transportation from primary receipt points to the primary delivery point and requests a predetermination that rolled-in rate treatment for the project is appropriate.

This filing 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, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any questions regarding the application are to be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, telephone no. (804) 819-2877, facsimile no. (804) 819-2064 and e-mail: Matthew.R.Bley@dom.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 the original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: January 10, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25325 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-35-000]

East Tennessee Natural Gas, LLC; Notice of Request Under Blanket Authorization

December 19, 2007.

Take notice that on December 13, 2007, East Tennessee Natural Gas, LLC (East Tennessee), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP08-35-000, an application pursuant to sections 157.205, 157.208, and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to increase the operating pressure on certain segments of its mainline pipeline system between Smyth County, Virginia, and Rockingham County, North Carolina, and to install related facilities to accommodate the increased volumes of natural gas production by CNX Gas Company LLC (CNX), under East Tennessee's blanket certificate issued in Docket No. CP82-412-000,¹ all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

East Tennessee proposes to increase the operating pressure on (1) approximately 5.78 miles of 12-inch diameter Line 3300-2 from 924 psig to 1150 psig, (2) approximately 26.34 miles of 24-inch diameter Line 3300-2 from 924 psig to 1200 psig, and (3) approximately 113.60 miles of 24-inch diameter Lines 3300-2 and 3600-1 from 1200 psig to 1440 psig and install appurtenant values, cross-over piping, pressure monitoring and overpressure protection equipment, and a heater and filter separator, all at an estimated cost of \$4,774,000. East Tennessee states that it would finance this project with funds on hand.

Any questions concerning this application may be directed to Garth Johnson, General Manager, Certificates & Reporting, East Tennessee Natural Gas, LLC, P.O. Box 1642, Houston, Texas 77251-1642, or via telephone at (713) 627-5415, or facsimile number (713) 627-5947.

This filing is available for review at the Commission 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 filed to access the document. For assistance, please contact FERC Online

¹ 20 FERC ¶ 62,413 (1982).

Support at FERC

OnlineSupport@ferc.gov or call toll-free at (866)206-3676, or, for TTY, contact (202)502-8659. 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 intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25328 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN06-3-003]

Energy Transfer Partners, L.P.; Energy Transfer Company; ETC Marketing Ltd.; Houston Pipeline Company; Oasis Pipeline, L.P.; Oasis Pipeline Company Texas, L.P.; ETC Texas Pipeline Ltd., Oasis Division; Notice of Designation of Commission Staff as Non-Decisional

December 20, 2007.

Pursuant to an order issued by the Commission today in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement is designated as non-decisional in deliberations by the Commission in this docket. Accordingly, they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, they are prohibited from communicating with advisory staff concerning any deliberations in this docket. Exceptions to this designation

are the Director of the Office of Enforcement and the Directors of the Divisions of Investigations, Energy Market Oversight, Audits, and Financial Regulation in the Office of Enforcement.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25321 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-37-000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

December 20, 2007.

Take notice that on December 17, 2007, Questar Pipeline Company, (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP08-37-000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon, by removal, the Skull Creek Compressor Station (Skull Creek) and appurtenant facilities, located in Sweetwater County, Wyoming, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web 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 at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Questar proposes to abandon and relocate the two compressor units at Skull Creek to achieve a higher utilization from the assets. Questar states that the compressors will be at Greasewood in Rio Blanco County, Colorado, to deliver gas from Questar into the proposed White River Hub. Questar declares that as a result of changes over the years in natural gas markets, there is now only one firm contract utilizing Skull Creek, with that contract expiring April 30, 2008. Questar asserts that the firm customer has purchased replacement capacity, beginning in January 2008, on the Rockies Express Pipeline, which satisfies its capacity needs previously provided by Skull Creek. Questar estimates the cost to remove the Skull Creek facilities to be \$500,000.

Any questions regarding the application should be directed to L. Bradley Burton, Manager, Federal Regulatory Affairs, Questar Pipeline Company, 180 East 100 South, P.O. 45360, Salt Lake City, Utah 84145-0360, call (801) 324-2459, fax (801) 324-5834, or by e-mail brad.burton@questar.com.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25320 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 19, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08-23-000.

Applicants: Williams Gas Marketing, Inc.; Bear Energy LP.

Description: Williams Gas Marketing, Inc and Bear Energy, LP submits a joint application for authorization of the disposition of jurisdictional facilities.

Filed Date: 12/14/2007.

Accession Number: 20071217-0137.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: EC08-25-000.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Request of Consolidated Edison Company of New York, Inc. for

Authorization to Acquire Short-Term Debt.

Filed Date: 12/12/2007.

Accession Number: 20071212-5094.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96-2601-020; ER96-2602-009.

Applicants: DPL Energy, LLC; Dayton Power and Light Company, The

Description: Market Power Analysis of The Dayton Power and Light Company and DPL Energy, LLC.

Filed Date: 12/17/2007.

Accession Number: 20071217-5080.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER97-1481-011.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits an amendment to its Market Rate Power Sale Tariff, First Revised Volume 6.

Filed Date: 12/14/2007.

Accession Number: 20071217-0146.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER98-2640-022; ER98-4590-020; ER99-1610-028; ER01-205-024.

Applicants: Northern States Power Company; Public Service Company of Colorado; New Century Pub Svc Co of CO; Xcel Energy Services Inc.

Description: Xcel Energy Services Inc submits a change in status report and appendix identifying generation assets.

Filed Date: 12/14/2007.

Accession Number: 20071217-0145.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER02-1437-005; ER02-1785-013.

Applicants: Triton Power Michigan LLC; Thermo Cogeneration Partnership LP.

Description: Triton Power Michigan LLC et al submits a supplement to its 11/9/07 submittal of a notice of non-material change in status.

Filed Date: 12/17/2007.

Accession Number: 20071218-0116.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER03-534-005.

Applicants: Ingenco Wholesale Power, L.L.C.

Description: INGenco Wholesale Power L.L.C. submits list of energy affiliates re notice of change in status.

Filed Date: 12/14/2007.

Accession Number: 20071214-5005.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER06-635-002; ER95-1007-021; ER99-3320-006;

ER00-2235-003; ER01-2741-006;
ER06-634-002; ER07-34-003.

Applicants: Edgcombe Genco, LLC; Rathdrum Power, LLC; Logan Generating Company, LP; Ouachita Power, LLC; Plains End, LLC; Spruance Genco, LLC; Plains End II, LLC; Shady Hills Power Company, L.L.C.; Fox Energy Company LLC

Description: Edgcombe Genco, LLC et al submits a notice of non-material change in status.

Filed Date: 12/14/2007.

Accession Number: 20071217-0142.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER06-738-007; ER06-739-007; ER07-501-003; ER07-758-002; ER03-983-006; ER02-537-010.

Applicants: Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, LLC; Birchwood Power Partners, L.P.; Fox Energy Company LLC; Shady Hills Power Company, L.L.C.; Inland Empire Energy Center, L.L.C.

Description: The GE Companies submit a notice of change in status.

Filed Date: 12/14/2007.

Accession Number: 20071218-0122.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER06-758-003.

Applicants: Chambers Cogeneration LP.

Description: Chambers Cogeneration, L.P. submits a notice on non-material change in status.

Filed Date: 12/14/2007.

Accession Number: 20071218-0123.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER06-759-002.

Applicants: Selkirk Cogen Partners, L.P.

Description: Selkirk Cogen Partners, LP submits a non-material change in status.

Filed Date: 12/14/2007.

Accession Number: 20071218-0113.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER07-1304-001.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp's compliance filing.

Filed Date: 12/14/2007.

Accession Number: 20071217-0149.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER07-576-005.

Applicants: Baltimore Gas and Electric Company.

Description: Baltimore Gas and Electric Co's revised Attachment H-2

tariff sheets for incorporation into PJM Interconnection, LLC's Open Access Transmission Tariff, effective 6/1/07.

Filed Date: 12/17/2007.

Accession Number: 20071219-0161.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER07-805-003; ER07-1304-001.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp's compliance filing.

Filed Date: 12/14/2007.

Accession Number: 20071217-0149.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER07-1172-002; ER07-1315-002.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits Substitute First Revised Sheet 82 et al. to FERC Electric Tariff, First Revised Volume 6, effective 7/13/07.

Filed Date: 12/17/2007.

Accession Number: 20071218-0115.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER07-1186-001; ER08-350-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits its compliance filing, pursuant to FERC's 10/18/07.

Filed Date: 12/17/2007.

Accession Number: 20071219-0162.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER08-125-003.

Applicants: Luminant Energy Company LLC.

Description: Luminant Energy Co. LLC submits revised sheets to its market-based rate tariff to reflect a recent succession and name change.

Filed Date: 12/14/2007.

Accession Number: 20071217-0148.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-191-002.

Applicants: Aquila, Inc.

Description: Aquila, Inc submits a supplement to the 11/6/07 filing of the Amended and Restated Coordinating Agreement for the Cooper-Fairport—St. Josephs 345 kV Interconnection.

Filed Date: 12/14/2007.

Accession Number: 20071217-0200.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-201-001.

Applicants: Cogentrix Virginia Leasing Corporation.

Description: Cogentrix Virginia Leasing Corp submits a supplement to

its

11/9/07 filing of a market-based rate application.

Filed Date: 12/14/2007.

Accession Number: 20071217-0144.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-202-001.

Applicants: James River Cogeneration Company.

Description: James River Cogeneration Co, LLC submits a supplement to its 11/9/07 filing of a market-based rate application.

Filed Date: 12/14/2007.

Accession Number: 20071217-0143.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-284-000.

Applicants: Argo Navis Fundamental Power Fund, L.P.

Description: Argo Navis Fundamental Power Fund, L.P. submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.

Filed Date: 12/03/2007.

Accession Number: 20071204-0064.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER08-333-000.

Applicants: Las Vegas Cogeneration LP.

Description: Application of Las Vegas Cogeneration Limited Partnership for order accepting initial market-based rate tariff, waving regulations and granting blanket approvals.

Filed Date: 12/14/2007.

Accession Number: 20071217-0196.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-334-000.

Applicants: New York Independent System Operator, Inc.

Description: The New York Independent System Operator, Inc submits its revisions to its Open Access Transmission Tariff etc.

Filed Date: 12/14/2007.

Accession Number: 20071217-0197.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-335-000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Co submits Rate Schedule 312, Short-Term Agreement with Lee County Electric Cooperative, Inc.

Filed Date: 12/14/2007.

Accession Number: 20071217-0198.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-336-000.

Applicants: Sithe Energy Marketing, L.P.

Description: Sithe Energy Marketing, LP submits a notice of cancellation.

Filed Date: 12/14/2007.

Accession Number: 20071217-0199.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-337-000.

Applicants: Watson Cogeneration Company.

Description: Application of Weston Cogeneration Co for order accepting initial market-based rate tariff, waving regulations and granting blanket approvals.

Filed Date: 12/14/2007.

Accession Number: 20071217-0147.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-338-000.

Applicants: Nexen Marketing.

Description: Nexen Marketing USA, Inc submits an application for Market-Based Rate Authority and request for Associated Waivers and Blanket Approvals.

Filed Date: 12/17/2007.

Accession Number: 20071218-0110.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER08-339-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits Seventh Revised Sheet 229 et al to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 12/17/2007.

Accession Number: 20071218-0111.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER08-340-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a compliance filing revising tariff sheets related to Energy Imbalance market.

Filed Date: 12/14/2007.

Accession Number: 20071218-0112.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: ER08-341-000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp submits Second Revised Interconnection and Local Delivery Service Agreement with the Village of Plymouth.

Filed Date: 12/17/2007.

Accession Number: 20071218-0114.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: ER08-342-000.

Applicants: Duke Energy Indiana, Inc.
Description: Duke Energy Indiana, Inc submits a Notice of Cancellation of their

Power Supply Agreement with Wabash Valley Power Association, Inc.

Filed Date: 12/18/2007.

Accession Number: 20071219-0163.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 8, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08-11-000.

Applicants: Central Maine Power Company.

Description: Application of Central Maine Power Co for authorization to issue short-term debt under Section 204 of the Federal Power Act.

Filed Date: 12/12/2007.

Accession Number: 20071214-0012.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08-61-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits First Revised Sheet 295 et al to FERC Electric Tariff, Fifth Revised Volume 1, effective 12/14/07.

Filed Date: 12/14/2007.

Accession Number: 20071218-0124.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR07-16-001.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to October 18 2007 Order.

Filed Date: 12/14/2007.

Accession Number: 20071214-5037.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on

or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Director.

[FR Doc. E7-25345 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[No. 946-007-Utah]

Hyrum City Hydroelectric Project; Notice of Availability of Environmental Assessment

December 20, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a subsequent license for the Hyrum City Hydroelectric Project, and has prepared an Environmental Assessment (EA). The operating project is located on Blacksmith Fork River in Hyrum City, Cache County, Utah. The project affects

about 17.03 acres of federal lands within the Wasatch Cache National Forest.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA 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 (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Please contact Gaylord Hoisington by telephone at (202) 502-6032 or by e-mail at gaylord.hoisington@ferc.gov if you have any questions.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25324 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12557-001]

SBER Royal Mills, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing a Deadline for Submission of Final Amendments

December 19, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P-12557-001.

c. *Date Filed:* December 12, 2007.

d. *Applicant:* SBER Royal Mills, LLC.

e. *Name of Project:* Royal Mills Hydroelectric Project.

f. *Location:* On the South Branch Pawtuxet River, in the town of West

Warwick, Kent County, Rhode Island. This project does not occupy federal lands.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Quentin Chafee, Development Director, Struever Bros. Eccles & Rouse, Inc., 166 Valley Street, Building 6M, Suite 103, Providence, RI 02909, (401) 574-2100, Q.Chafee@sber.com.

i. *FERC Contact:* Steve Kartalia, Stephen.Kartalia@ferc.gov, (202) 502-6131.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission no later than 60 days from the application filing date, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: February 11, 2008.

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.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "eFiling" link. After logging into the eFiling system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Royal Mills Hydroelectric Project would consist of the following facilities: (1) an existing 110-foot-long by 21-foot-high granite block dam; (2) the existing 3.8-acre reservoir, (3) an existing 150-foot-long by 40-foot-wide power canal; (4) an existing powerhouse containing one single new cross-flow turbine generating unit with total installed generating

capacity of 225 kilowatts (kW); and (5) appurtenant facilities. The restored project would have an estimated average annual generation of 1,000,000 kilowatt-hours. The dam and existing project facilities are owned by the applicant.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web 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 documents. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676 or for TTY, contact (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.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.

q. With this notice, we are initiating consultation with the RHODE ISLAND HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

r. *Final amendments:*

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.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25326 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197-073—North Carolina; Yadkin Hydroelectric Project]

Alcoa Power Generating, Inc.; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

December 20, 2007.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative

efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.¹ The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the North Carolina State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Yadkin Hydroelectric Project No. 2197-073 (SHPO Reference Number ER03-1246).

The programmatic agreement, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Yadkin Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Alcoa Power Generating, Inc., as licensee for Yadkin Hydroelectric Project No. 2197, the United States Forest Service, the Catawba Indian Nation, Badin Historic Museum, Inc., and the Trading Ford Historic District Preservation Association have expressed an interest in this proceeding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004
Gene Ellis or Representative, ALCOA Power Generating Inc., PO Box 576, Badin, NC 28009-0576
Ann Brownlee, President, Trading Ford Historic District, Preservation

Association, 400 Lantz Ave,
Salisbury, NC 28144

Renee Gledhill-Earley, North Carolina
Department of Cultural Resources
4617 Mail Service Center, Raleigh, NC
27699-4617

Dr. Wenonah G. Haire or Representative,
CIN THPO, 1536 Tom Stevens Rd,
Rock Hill, SC 29730

Badin Historic Museum, Inc., C/O:
Bridget Huckabee, P. O. Box 1553,
Badin NC 28009

Rodney Snedeker or Representative,
United States Forest Service, 160A
Zillicoa Street, Ashville, NC 28801

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Kimberly D. Bose, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project name "Yadkin Hydroelectric Project" and number "P-2197-073" on the front cover of any motion. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25322 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206-030—North Carolina
Yadkin-Pee Dee River Hydroelectric Project]

Alcoa Power Generating, Inc.; Notice of Proposed Restricted Service List for a Programmatic Agreement For Managing Properties Included in or Eligible for Inclusion in The National Register of Historic Places

December 20, 2007.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.¹ The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the North Carolina State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Yadkin-Pee Dee River Project No. 2206-030 (SHPO Reference Number ER 01-8094).

The programmatic agreement, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Yadkin-Pee Dee Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Progress Energy Carolinas, Inc., as licensee for Yadkin-Pee River Project No. 2206, and the Catawba Indian Nation have expressed an interest in

¹ 18 CFR section 385.2010.

¹ 18 CFR 385.2010.

this proceeding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004

Larry T. Mann, Manager or Representative, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., PO Box 1551, Raleigh, NC 27602-1551

Tim Bachelder, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103

Renee Gledhill-Earley, North Carolina Department of Cultural Resources, 4617 Mail Service Center, Raleigh, NC 27699-4617

Dr. Wenonah G. Haire or Representative, CIN THPO, 1536 Tom Stevens Rd, Rock Hill, SC 29730

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Kimberly D. Bose, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project name "Yadkin-Pee River Project" and number "P-2206-030" on the front cover of any motion. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on

any motion or motions filed within the 15 day period.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-25323 Filed 12-28-07; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8512-9]

Proposed CERCLA Administrative Cost Recovery Settlement; Mason Road Lead Site, Mason, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement which includes compromise of past response costs incurred in connection with the Mason Road Lead site in Mason Ohio with the Board of Education Mason of Mason City School District. The settlement requires Settling Party to reimburse U.S. EPA Hazardous Substance Superfund \$15,917.36 for costs incurred by U.S. EPA since December 11, 2004, through the effective date of this Administrative Order on Consent to oversee the clean-up of the Mason Road Lead site. The total past costs incurred between December 11, 2004, and December 9, 2006, are \$19,896.70 and are being compromised in consideration of the settling party having completed a removal action under the terms of a Unilateral Administrative Order Docket No: V-W-04-C-803 issued pursuant to CERCLA section 106(a), 42 U.S.C. 9607(a). The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations with indicate that the settlement is inappropriate, improper, or inadequate. The U.S. EPA's response to any comments received will be available for public inspection at the U.S. EPA Record Center, Room 714, U.S. EPA, 77

West Jackson boulevard, Chicago, Illinois.

DATES: Comments must be submitted to U.S. EPA on or before 30 days from date of publication of this notice and request for public comment.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Record Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois. A copy of the proposed settlement may be obtained from the U.S. EPA Record Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois or by calling tel. # (312) 353-5821. Comments should reference the Mason Road Lead site in Mason, Ohio and EPA Docket No. and should be addressed to Ms. Susan Prout, U.S. EPA Office of Regional Counsel (C-14J), 77 W. Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Prout, U.S. EPA Office of Regional Counsel (C-14JA), 77 W. Jackson Boulevard, Chicago, IL 60604 or at tel. # (312) 353-1029.

Dated: December 17, 2007.

Richard C Karl,

Director, Superfund Division, Region 5.

[FR Doc. 07-6253 Filed 12-28-07; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 04-151; WT Docket No. 05-96; DA 07-4605]

Wireless Telecommunications Bureau Announces Start Date for Licensing and Registration Process for the 3650-3700 MHz

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau (WTB or Bureau) announces as the start date for filing applications for nationwide non-exclusive licenses in the 3650-3700 MHz band (3650 MHz band). The Bureau explains how to use the Commission's Universal Licensing System (ULS) to acquire a nationwide non-exclusive license for terrestrial operations in the 3650 MHz band and how to register fixed and base stations under such a license.¹ Mobile and

¹ ULS is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

portable stations, which are typically used by consumers, *i.e.*, end users or subscribers, do not require a separate license and do not have to be registered in ULS.

DATES: The start date for filing applications for nationwide non-exclusive licenses in the 3650–3700 MHz band (3650 MHz band) is November 15, 2007.

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

FOR FURTHER INFORMATION CONTACT: Jennifer Mock at 202–418–2487. For additional information and/or assistance, please visit the Web at <http://esupport.fcc.gov>. Interested persons can also call the FCC at (877) 480–3201 or 717–338–2888 (TTY 717–338–2824). To provide quality service and ensure security, all telephone calls are recorded.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, released November 14, 2007. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCP), Portals II, 445 12th Street, SW., Room CY–B402., Washington, DC. The complete item is also available on the Bureau's Web site at <http://www.fcc.gov/wtb>.

I. Background

In 2005 the Commission adopted a *Report and Order* that revised the FCC's rules to open the 3650 MHz band for terrestrial wireless broadband operations. Recently, the Commission addressed petitions for reconsideration of the *Report and Order* by affirming the rules and policies adopted in 2005, with one rule modification and a clarification.² These rules involve minimal regulatory burdens to encourage multiple entrants and to stimulate the rapid expansion of broadband services—especially in America's rural heartland—while at the same time ensuring that incumbent, grandfathered satellite Earth stations and Federal radiolocation stations in this band are protected from harmful interference. Briefly, there are four key

steps involved in obtaining authority to operate a base or fixed station:

- Obtain a nationwide, non-exclusive license using ULS.
- Before registering a station, examine ULS for nearby stations.
- Obtain FCC-certified equipment (fixed, base and mobile equipment operating in the band must incorporate a “contention-based protocol”).
- Register each fixed and base station using ULS.

Nationwide, non-exclusive licenses. New terrestrial operations in the band will be licensed on a nationwide, non-exclusive, *i.e.*, shared, basis with other licensees of the band. However, a licensee is not authorized to operate a fixed or base station until that station is registered with the FCC. All terrestrial licensees will have the mutual obligation to cooperate and avoid harmful interference to one another as well as to protect grandfathered operations, as further described below. There are no eligibility restrictions for licenses (other than the statutory foreign ownership restrictions) and no in-band or out-of-band spectrum aggregation limits.³ Licenses will have a 10-year license term and licensees will have a right to a renewal expectancy. Licensees will be free to assign and transfer their nationwide non-exclusive licenses and to “assign” or share fixed and base stations that are registered.⁴ Applicant qualifications for nationwide non-exclusive licenses in the 3650 MHz band will be assessed in accordance with the requirements of FCC Form 601 and the Commission's rules.

Examine ULS for nearby stations. Licensees should examine the registration database⁵ before registering a station and make every effort to ensure that their fixed or base station will operate at a location, and with technical parameters, that will minimize the potential to cause and receive harmful interference.⁶ We emphasize that

³ Certain equipment, based on its FCC certification and as described below, will be restricted to operating only in the lower 25 megahertz of the 3650 MHz band.

⁴ See discussion in Section 0, *infra*.

⁵ Licensees can use the ULS license search located at <http://wireless2.fcc.gov/ULSApp/ULSSearch/searchLicense.jsp> to search the database for licenses with registered locations. The geosearch capability in ULS will allow interested parties to specify frequencies or a frequency band and geographic information such as county and state, address and radius or geographic coordinates and radius. ULS will return any licenses with registered locations within the search criteria. Future enhancements to the search capability will allow ULS to display each registered location that meets the search criteria with a unique identifier.

⁶ See 47 CFR 90.1319. Channels are available on a shared basis only and will not be assigned for the exclusive use of any licensee. Licensees of stations

coordination is each licensee's responsibility and that manufacturers of FCC-certified equipment are not responsible for coordination.

FCC-certified equipment: Licensees should determine, by checking the equipment manual or asking their equipment vendor or manufacturer, whether the equipment they are planning to use is certified by the FCC as “unrestricted” or “restricted.” Fixed, base, mobile, and portable equipment in the 3650 MHz band must use “contention-based protocols” and will be certified as either “unrestricted” or “restricted.” Contention-based protocols will allow multiple users to share the same spectrum by defining the events that must occur when two or more devices attempt to simultaneously access the same channel and establishing rules by which each device is provided a reasonable opportunity to operate.

—Unrestricted contention protocols are broadly compatible and function to prevent interference even with other, dissimilar contention technologies on the market. Equipment using an unrestricted protocol can operate on all 50 megahertz (3650–3700 MHz).⁷

—Restricted contention protocols can prevent interference only with other devices incorporating the same or similar protocols. Equipment using a restricted protocol can operate only on the lower 25 megahertz (3650–3675 MHz).⁸

Note: Applications for nationwide, non-exclusive licenses may be filed now and licensees may file station registrations for restricted equipment.

Note: Licensees may NOT file station registrations for unrestricted equipment until the FCC has certified unrestricted equipment for the 3650 MHz band.

Register each fixed and base station. A licensee will be allowed to register all of its fixed and base stations under one

suffering or causing harmful interference are expected to cooperate and resolve the problem by mutually satisfactory arrangements. *Id.*

⁷ 47 CFR 90.7, 90.1319(c). For unrestricted devices, the FCC's Equipment Authorization Database and the grant of equipment certification will include note code “UR” and the following text: “This device incorporates an unrestricted contention based protocol. It is capable of avoiding co-frequency interference with devices using other types of contention-based protocols.”

⁸ 47 CFR 90.1319(c). For restricted devices, the FCC's Equipment Authorization Database and the grant of equipment certification will include note code “RS” and the following text: “This device incorporates a restricted contention based protocol. It may not be capable of avoiding co-frequency interference with devices using other types of contention-based protocols. Operation is restricted to the 3650–3675 MHz band.”

² Wireless Operations in the 3650–3700 MHz Band, ET Docket No. 04–151, Rules for Wireless Broadband Services in the 3650–3700 MHz Band, WT Docket No. 05–96, *Report and Order*, 20 FCC Rcd 6502 (2005) (2005 Order), *recon. granted in part, Memorandum Opinion and Order*, FCC 07–99 (rel. June 7 2007) (2007 MO&O).

nationwide, non-exclusive license. Prior to operating a fixed or base station, the licensee must register it in ULS, which will serve as a common database for licensees to locate each other's operations and consult in meeting their obligation to reach a reasonable accommodation with the other 3650 MHz band operators nearby. Operations cannot begin until the application for registration is in an "Accepted" status and the nationwide license is updated on ULS.⁹

The registration process will also facilitate protection of grandfathered, incumbent stations from interference. There are two types of grandfathered, incumbent stations that new 3650 MHz band licensees must protect: non-Federal and Federal.

—*Non-Federal.* Absent an agreement between the relevant licensees, new terrestrial stations are prohibited (and thus base and fixed stations cannot be registered) within 150 km circular protection zones established around each grandfathered Fixed Satellite Service (FSS) Earth station.¹⁰

—*Federal.* Requests to register base or fixed stations within 80 km circular protection zones established around each of three Federal radiolocation stations will only be placed in an "Accepted" status (and the nationwide license will only be updated) on ULS upon successful coordination by the FCC with the National Telecommunications and Information Administration (NTIA).¹¹

Note: Licensees should also determine if there are any nearby Federal radar systems operating in adjacent bands that could affect their operations by consulting NTIA TR-99-361.¹²

⁹ Submitted registrations are reviewed for, among other things, proximity to grandfathered satellite Earth stations and registration at certain locations require additional approvals; such as, but not limited to, international coordination, Federal coordination, Environmental Assessment, Quiet Zone, etc. Therefore, a registration is not complete until it is in an "Accepted" status and the nationwide license is updated on ULS.

¹⁰ The coordinates of the FSS Earth stations are available at <http://www.fcc.gov/ib/sd/3650/>. See 47 CFR 90.1331(a)(1). Base and fixed stations may be located within 150 km of a grandfathered satellite Earth station if the licensees mutually agree on such operation. Any negotiations must be conducted in good faith by all parties. See 47 CFR 90.1331(a)(2) and (3).

¹¹ See 47 CFR 90.1331(b). The FCC will attempt to coordinate such requests with the National Telecommunications and Information Administration (NTIA) through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee (IRAC). *Id.*

¹² See *id.* citing Technical Characteristics of Radiolocation Systems Operating in the 3.1–3.7 GHz Band and Procedures for Assessing EMC with

Mobile and portable stations. These stations are not registered but may only operate if they can positively receive and decode an enabling signal transmitted by a registered base station. This requirement is intended to ensure that mobile and portable stations operate within range of a registered base station(s), thereby avoiding interference to grandfathered FSS and Federal stations. Ordinarily, licensees can meet this requirement by using FCC-approved equipment.

Technical rules. Fixed and base stations will be allowed to operate with a peak power limit of 25 Watts per 25-megahertz bandwidth, and mobile stations with a peak power limit of 1 Watt per 25-megahertz bandwidth. All systems must use a contention-based protocol and only systems using an unrestricted protocol can operate in the 3675–3700 MHz band. Ordinarily, licensees can satisfy these requirements by using FCC-approved equipment.

Note: A nationwide, non-exclusive license does NOT authorize any operation in the 3650 MHz band—unless and until each base and fixed station is registered in ULS.

The Commission noted that the licensing and fixed and base station registration process would be simple and streamlined and that it will be done electronically using ULS.¹³ The Commission also directed and authorized WTB to issue the instant Public Notice, which announces the start date for filing applications for nationwide non-exclusive licenses in the 3650 MHz band as well as procedures for licensees to register fixed and base stations.

II. Application for Nationwide, Non-Exclusive Licenses

Applicants for nationwide non-exclusive licenses in the 3650 MHz band will use ULS to file the information request on FCC Form 601 electronically. Applicants can access the ULS Web site at <http://wireless.fcc.gov/uls>. In order to file an application for a license and to register fixed and base stations in ULS, applicants must have an FCC Registration Number (FRN). If the applicant does not have an existing FRN, it must register and obtain an FRN prior to filing the license application.¹⁴

Fixed Earth Station Receivers, NTIA TR 99-361, available at <http://www.ntia.doc.gov/osmhome/reports/ntia99-361/ntia99-361.pdf>.

¹³ Certain applications for a non-exclusive nationwide license in the 3650 MHz band may be filed manually; however, all applicants are strongly encouraged to file electronically using ULS because licensees who file applications manually risk dismissal of their applications for routine errors.

¹⁴ The FCC Registration Number (FRN) is the 10-digit number assigned to all entities (individual and

FCC Form 601 is the Commission's standard application form for wireless licenses¹⁵ and is required for all filings. To file electronically, applicants should log into ULS using their FRN and password. Once logged in the applicant should select "Apply for a New License" from the menu. On the following page, the applicant should select Wireless Broadband Services in the 3650–3700 MHz Band (Radio Service code NN) from the list of radio services and click continue. The applicant should follow the online prompts to complete the application. For additional help with the filing process, the applicant can click on the Common Questions links that appear on most pages of the ULS License Manager, or click the Help link in the upper right hand corner of the screen. ULS performs edit checks as information is entered. If ULS finds an error, it may not allow the application to be submitted until the error has been corrected.

Applications are assigned file numbers and all applications (and major amendments thereto) that are accepted for filing will be listed in WTB's weekly Public Notice of such applications. An application may be granted at any time if WTB finds that the application meets all of the Commission's requirements (e.g., meets qualification requirements, foreign ownership restrictions, payment obligations), except that certain applications, as discussed below, will not be granted prior to the 31st day following the issuance of a Public Notice accepting the application for filing. When an application is granted, an authorization will be issued to the applicant, and the grant will be placed in WTB's Weekly Action Public Notice. Licenses for terrestrial operations in this band will be issued for the entire bandwidth of the 3650 MHz band (*i.e.*, 3650–3700 MHz).

Applicants that plan to operate under more than one regulatory status, and that seek to register and operate fixed and base stations on a non-common carrier and/or private, internal basis as early as possible, may file one application for common carrier regulatory status and a second application for non-common carrier and/or private, internal regulatory status. Applications to provide non-

corporate) that transact business with the FCC (including via ULS) and is not to be confused with the fixed and base station registration procedures discussed below. Applicants can obtain a FRN using the WTB Web site at <http://wireless.fcc.gov> and selecting "FRN Registration" from the right hand menu under the heading of Licensing.

¹⁵ See 47 CFR 1.913(a)(1). License applicants will not be required to file any associated schedules. Form 601 Main Form and Schedule M are used for registrations, as explained below in Section III.

common carrier service and/or for private, internal communications may be granted any time after they are accepted for filing. Applications that include a request for common carrier regulatory status will *not* be granted prior to the 31st day following the issuance of a Public Notice accepting the application for filing.¹⁶ This waiting period accommodates the statutory right of petitioners to file petitions to deny against common carrier applications. System limitations preclude WTB from processing a non-common carrier request separately when filed on the same form as a common carrier request. However, applicants that are willing to have their entire application processed under the “common carrier” track, *i.e.*, under the “notice and 30-day waiting period” of Section 1.945(b), can request common carrier and non-common carrier status on a single Form 601.

III. Fixed and Base Station Data Registration Process

As discussed above, a licensee must hold a nationwide, non-exclusive license before it can register fixed or base stations, and each base or fixed station must be registered electronically in ULS before it can be operated.¹⁷ To register a station, the licensee will need to provide specific technical details, including whether the equipment uses a restricted (RS) or unrestricted (UR) protocol,¹⁸ the FCC Equipment

Identification number (FCC ID number), the base or fixed station’s location (latitude and longitude), and other technical parameters, *e.g.*, EIRP, and antenna height above ground. If disputes arise, the FCC ID number generally will allow licensees and the Commission to quickly verify whether the equipment in question is FCC-certified for unrestricted contention-based protocol operation at 3650–3700 MHz or restricted contention-based protocol operation, which is limited to 3650–3675 MHz.

Equipment upgrades by or from the manufacturer. The Commission recognized that manufacturers, through software upgrades or other means, may alter the emission characteristics of previously deployed devices so that they move from the restricted to the unrestricted category. To the extent that this occurs, the manufacturer will be responsible for complying with the Commission’s equipment certification rules.¹⁹ However, to the extent that a licensee’s previously registered equipment is then upgraded, the affected licensee must update its base and fixed station registrations to reflect this change (and the registration application must be in an “Accepted” status and the nationwide license updated on ULS) before the station tunes over 3675–3700 MHz.

The process of electronically registering stations in ULS will begin when a licensee enters its FRN and password. Once the licensee is logged in, it should select “My Licenses” from the menu. At this point, the licensee will be presented with a list of call signs assigned to its FRN. The licensee should then click on the nationwide non-exclusive (NN radio service) call sign under which it intends to register its stations, and then click on the link labeled “Register Locations.” The licensee should then click on the link labeled “Add New Location.” Clicking on this link will step the licensee through the filing process for registering a new fixed or base station. If the

proposed station registration requires an environmental assessment or is located in a quiet zone, the licensee must specify this fact on Schedule M and provide any necessary information in accordance with the instructions and FCC Rules. At this time, the complete registration process must be repeated for each individual location that the licensee wishes to register; however, batch filing will be available to licensees who have tested this process with us and have been granted approval to register their fixed and base stations in this fashion.

The ULS electronic form performs edit checks as information is entered. For instance, ULS will verify that the specified power and other technical parameters are within the limits specified in the FCC rules. Based on the licensee’s response, ULS will also determine whether the registrant is eligible for the full 50 MHz of spectrum based on the use of an unrestricted protocol or whether the registrant is limited to the use of the lower 25 MHz of the band based on the use of a restricted protocol. Finally, as part of the nightly processing, ULS will automatically, based on the station’s coordinates, determine whether the base station is in an area requiring international coordination or whether the station is within one of the protection zones established around the three grandfathered Federal radiolocation stations or the grandfathered FSS Earth stations. For those licensees attempting to locate stations within the protection zones around the three grandfathered Federal sites, the Commission will refer those applications to the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee. Stations may only be located within the protection zone of a grandfathered FSS station if an agreement is negotiated between the parties. If a station is located within the protection zone of a grandfathered FSS station and the licensee does not certify that they have negotiated an agreement with the grandfathered FSS licensee, ULS will dismiss the registration application.²⁰

Station registrations will not be placed on Public Notice as a matter of

¹⁶ For example, on November 21, 2007, WTB releases the weekly Public Notice of applications received between November 12–16, 2007, that are acceptable for filing. The 31st day following this Public Notice is Saturday, December 22, 2007, making Monday, December 24, 2007, the first day on which a common carrier application received on November 15–16, 2007, can be granted. A licensee is required to file fixed and base station registrations so an applicant that plans to request common carrier and non-common carrier/private status may wish to file one application for common carrier regulatory status and a second application for non-common carrier and/or private, internal regulatory status, as applicable, if it seeks to register base and fixed stations and begin non-common carrier/private internal operations as early as possible.

¹⁷ Mobile and portable stations that operate with a peak EIRP of 1 Watt/25 megahertz and receive and decode an enabling signal from a base station are not required to be registered even if used in a fixed mode.

¹⁸ Licenses are advised to consult with the equipment manufacturer or vendor to determine whether the equipment is certified as restricted or unrestricted protocols. That information is also available by searching the Equipment Authorization Database at <https://fjallfoss.fcc.gov/oetcf/eas/reports/GenericSearch.cfm> using the FCC ID number of the equipment and referring to the note code(s) and text of the equipment approval. For equipment modified according to permissive rules (*see infra* note 19), the grant of equipment certification may indicate both UR and RS, in which case the status of each licensee’s equipment will depend on the version of the radio transmitter installed at each site.

¹⁹ *See also* 47 CFR 2.944 (Software defined radios) and 2.1043 (Changes in certificated equipment) which describe the certification requirements for modified equipment. Section 2.1043(a) sets out the conditions under which a new grant of certification is required, and Section 2.1043(b) sets out three categories of permissive changes that may be made without the application for and grant of new certification. In two of the three categories of permissive changes, the modified equipment shall not be marketed under the existing grant of certification prior to acknowledgement by the Commission that the change is acceptable. *See* 47 CFR 2.1043(b)(2),(3). Equipment not originally certified as software defined radio may not be upgraded in the field for the new frequency band or power level without obtaining a new grant of certification (and a new FCC Identifier).

²⁰ Future enhancements to ULS may provide an alert to the licensee at the time of data entry indicating that they are attempting to register a station within the protection zone of a grandfathered earth station. In the meantime, to avoid dismissal, licensees should consult the list of grandfathered FSS earth stations located at <http://www.fcc.gov/ib/sd/3650/> prior to filing to determine if they are in a location that would require negotiating an agreement with a grandfathered FSS earth station.

routine unless they raise a matter of public significance (e.g., environmental concerns).²¹ When the FCC accepts an individual fixed or base station registration, ULS will be updated and the licensee will be notified by letter. The licensee is not authorized to operate the station until the application for registration is in an "Accepted" status and the nationwide license is updated on ULS. Individual station registrations will be available for public inspection through ULS electronically. We note, however, that under the current ULS system, the printed copy of the nationwide non-exclusive license will not be updated to reflect station registrations and will not be re-issued when individual stations are registered with that call sign.

IV. License Modifications; Transfers and Assignments

Modifications to nationwide non-exclusive licenses in the 3650 MHz band will be limited to changing the data on the FCC Form 601 Main Form, which contains administrative data and certifications. Modifications to the non-exclusive nationwide license may be filed electronically using ULS. To file, applicants should log into ULS using their FRN and password. Once logged in, the applicant should select "My Licenses" from the menu. At this point, the licensee will be presented with a list of call signs assigned to its FRN. The licensee should then select the nationwide non-exclusive (NN radio service) call sign that it intends to modify and click on the update link in the navigation menu at the right side of the screen. The licensee should follow the online prompts to complete the application. For additional help with the filing process, the applicant can click on the Common Questions links that appear on most pages of the ULS License Manager, or click the Help link in the upper right hand corner of the screen. Modifications to the non-exclusive nationwide license must be filed independent of any filing involving registration of fixed and base stations.

Wireless licensees in the 3650 MHz band may assign or transfer their nationwide non-exclusive licenses using FCC Form 603. A licensee can only assign or transfer its entire non-exclusive license and it cannot engage in partitioning or disaggregation. Any fixed or base stations registered under a nationwide non-exclusive license will

remain associated with that license during a full assignment or transfer. Licensees can NOT file applications on Form 603 to "assign" individual stations registered under their nationwide non-exclusive license to another nationwide non-exclusive licensee. Rather, licensees are free to make and record such transactions by having the first licensee delete the registered station(s) from its license and having the second licensee register the station(s) under its license.

V. Modification of Fixed and Base Station Registrations

Modifications to fixed or base station registrations must be done electronically through ULS. A licensee will initiate the modification process by going to the ULS web site and entering its FRN and password. Once the licensee is logged in, they should select "My Licenses" from the menu. At this point, the licensee will be presented with a list of call signs assigned to their FRN. The licensee should then click on the nationwide non-exclusive (NN radio service) call sign containing the station it wishes to modify, and then click on the link labeled "Register Locations." The licensees will then be presented with a list of stations associated with that license. Station registrations can be modified by clicking on the desired station link. The process described above must be repeated for each station to be modified.

To amend the data on an individual station registration which is not yet in an "Accepted" status on ULS, the process is as follows: The licensee must go to the ULS Web site and enter its FRN and password. Then the licensee should click on the link labeled "My Applications" and then click on the link labeled "Pending" to display a list of applications, which will include pending registrations. The pending station registration can be amended by clicking on the file number of the desired pending registration and then clicking on the link labeled "Update." Under electronic filing, the previously entered data from Schedule M will be displayed and the licensee will be allowed to change the data. The process described above must be repeated for each pending registration that is to be amended.

VI. Filing and Regulatory Fees

The 3650 MHz band is licensed as a land mobile service, under part 90 of the FCC's Rules, for non-exclusive wireless operations on a Commercial Mobile Radio Service (CMRS) basis and/or on a Private Mobile Radio Service (PMRS)

basis.²² Such applications are subject to filing fees under section 1.1102 and regulatory fees under section 1.1152.²³ The Commission's rules exempt certain applicants from filing and/or regulatory fees.²⁴

Listing the current fees in this public notice would disserve applicants because the Commission adjusts filing and regulatory fees periodically as required by several statutes.²⁵ Applicants and licensees must check the Wireless Telecommunications Bureau Fee Filing Guide for current fees.²⁶ Nonexempt applicants for nationwide non-exclusive licenses in the 3650 MHz band will be subject to application filing and regulatory fee categories as follows:

- New PMRS non-exclusive nationwide license applications: Fee type code PALR.²⁷
 - New CMRS non-exclusive nationwide license applications: Fee type code PALM.
 - Modification of PMRS or CMRS non-exclusive nationwide license applications: Fee type code PALM.
 - PMRS or CMRS Assignments of Authorization: Fee type code PALM.
 - PMRS or CMRS Transfers of Control applications: Fee type code PATM.
- Individual transmitter location registrations on ULS are not subject to filing fees.

VII. Database Accuracy Procedures

In the 2005 Order, the Commission stated that "in order to keep the ULS

²² Commercial mobile radio service is a mobile service that is: (a)(1) Provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) the functional equivalent of such a mobile service described in paragraph (a). See 47 CFR 20.3. Private Mobile Radio Service is a mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service. *Id.*

²³ See 47 CFR 1.1102 (item 6 sets filing fees for land mobile operations); 1.1152 (item 4 sets regulatory fee for PMRS land mobile, item 6 sets the regulatory fee for CMRS land mobile). Additional information about the fees is available in the Wireless Telecommunications Bureau Fee Guide. See *infra* note 26.

²⁴ See 47 CFR 1.1114, 1.1162 (exemptions from filing and regulatory fees, respectively).

²⁵ See 47 U.S.C. 158(b)(1), 159(b)(2).

²⁶ See <http://www.fcc.gov/fees/appfees.html> and click on the link to the latest Wireless Telecommunications Bureau Fee Filing Guide, or call 1-877-480-3201.

²⁷ An application for authorization to provide common carrier radio service (Main Form Item 41), mobile radio service (Main Form Item 42), and service interconnected to the public telephone network (Main Form Item 43) should be filed using the PALM fee type code even if the application also seeks authority for non-common carrier radio service and/or private, internal communications (Item 41) and/or for fixed operation (Item 42).

²¹ See, e.g., 47 CFR 1.933(a)(3) (categories of information of public significance include special environmental considerations as required by part 1, FCC Rules).

licensing and registration database accurate and up-to-date, we delegate to the WTB the authority to adopt rules regarding the reporting of database information including reporting of any license or station transfers. The WTB will issue a Public Notice seeking comment on these issues, if needed.”²⁸

The public will be able to examine the registration database online, through ULS, to determine locations of fixed and base stations. More specifically, the database will allow applicants and licensees to identify the location of base and fixed stations in the 3650 MHz band to facilitate cooperation among users and protection of grandfathered stations from interference. The database will also permit the Commission to monitor the use of this spectrum as new technologies and services develop.

Over time, the utility of the database will be diminished if registration data becomes outdated or otherwise inaccurate. Thus, we emphasize that the requirement to register fixed and base stations prior to operation is ongoing—operating previously registered but subsequently modified equipment or operating parameters would subject the operator to enforcement action. The Commission’s rules also require registrations for unused fixed and base stations to be deleted.²⁹ For purposes of this requirement, we will generally consider a fixed or base station to be “unused” if it has not operated for one year or more.³⁰ Also, as noted above, licensees must update their base and fixed station registrations to reflect changes resulting from equipment manufacturer’s software upgrades.

Additional reporting or periodic certification requirements may be necessary to maintain accurate and current data. However, rather than adopting or seeking comment on additional measures at this juncture, the WTB is reserving the right to revisit this matter in the future after the Bureau, as well as licensees, have the opportunity to gauge the effectiveness of the existing requirements for this new service.

²⁸ 2005 Order, 20 FCC Rcd at 6513–14 ¶ 32; see also 2005 Order at 6536 ¶ 103 (ordering clause granting WTB delegated authority “to adopt requirements regarding the reporting of registration and licensing information, pertaining to the 3650 MHz Wireless Broadband Services, in the Universal Licensing System database.”).

²⁹ See 47 CFR 90.1307.

³⁰ See generally 47 CFR 90.157(a) (“[u]nless stated otherwise in this part or in a station authorization * * * any station which has not operated for one year or more is considered to have been permanently discontinued.”).

Federal Communications Commission.

Joel D. Taubenblatt,

Acting Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 07–6229 Filed 12–28–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Information Collection Submitted for OMB Review and Comment Request

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“ASC”) will submit to the Office of Management and Budget (“OMB”) for clearance the following information collection, without change from a previously approved collection.

DATES: Comments on this information collection must be received on or before January 30, 2008.

ADDRESSES: Send comments to Marc L. Weinberg, Acting Executive Director and General Counsel, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006; and Mark D. Menchik, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Marc L. Weinberg, Acting Executive Director and General Counsel, Appraisal Subcommittee, 2000 K NW., Suite 310, Washington, DC 20006, from whom copies of the information collection and supporting documents are available.

Summary of Revision

Title: Description of Office, Procedures, Public Information, 12 CFR part 1102, subpart D.

Type of Review: Regular submission.
Description: The information collection enables the ASC to comply with the Freedom of Information Act, as amended, (“FOIA” 5 U.S.C. 552. It will be used by the ASC and its staff in determining whether requests for access to ASC records should be provided and whether appeals from adverse agency decisions regarding access should be granted under FOIA.

Form Number: None.

OMB Number: 3139–0004.

Affected Public: All members of the public.

Number of Respondents: 11 respondents.

Total Annual Responses: 11 responses.

Average Hours per Response: 20 minutes.

Total Annual Burden Hours: 3.67 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: December 21, 2007.

Marc L. Weinberg,

Acting Executive Director & General Counsel.

[FR Doc. 07–6228 Filed 12–28–07; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Information Collection Submitted for OMB Review and Comment Request

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“ASC”) will submit to the Office of Management and Budget (“OMB”) for clearance the following information collection, without change from a previously approved collection.

DATES: Comments on this information collection must be received on or before January 30, 2008.

ADDRESSES: Send comments to Marc L. Weinberg, Acting Executive Director and General Counsel, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006; and Mark D. Menchik, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Marc L. Weinberg, Acting Executive Director and General Counsel, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006, from whom copies of the information collection and supporting documents are available.

Summary of Revision

Title: Temporary Waiver Requests, Rules 1102.1 through 1102.7, 12 CFR part 1102, subpart A.

Type of Review: Regular submission.

Description: The information will be used by the ASC and its staff Requests

for temporary waiver relief under Sec. 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3348(b)).

Form Number: None.

OMB Number: 3139-0003.

Affected Public: Individuals and households.

Number of Respondents: 1 respondent.

Total Annual Responses: 1 response.

Average Hours per Response: 3 hours.

Total Annual Burden Hours: 3 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: December 21, 2007.

Marc L. Weinberg,

Acting Executive Director & General Counsel.

[FR Doc. 07-6237 Filed 12-28-07; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Information Collection Submitted for OMB Review And Comment Request

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") will submit to the Office of Management and Budget ("OMB") for clearance the following information collection, without change from a previously approved collection.

DATES: Comments on this information collection must be received on or before January 30, 2008.

ADDRESSES: Send comments to Marc L. Weinberg, Acting Executive Director and General Counsel, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006; and Mark D. Menchik, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, Acting Executive Director and General Counsel, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006, from whom copies of the information collection and supporting documents are available.

Summary of Revision

Title: 12 CFR part 1102, subpart D; Rules pertaining to the privacy of individuals and systems of records maintained by the Appraisal Subcommittee.

Type of Review: Regular submission.

Description: The information will be used by the ASC and its staff in determining whether to grant to an individual access to records pertaining to that individual and whether to amend or correct ASC records pertaining to that individual under the Privacy Act of 1974 (5 U.S.C. 552a).

Form Number: None.

OMB Number: 3139-0006.

Affected Public: Individuals and households.

Number of Respondents: 50 respondents.

Total Annual Responses: 50 responses.

Average Hours per Response: .33 hours.

Total Annual Burden Hours: 16.67 hours.

Dated: December 21, 2007.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Marc L. Weinberg,

acting Executive Director & General Counsel.

[FR Doc. 07-6238 Filed 12-28-07; 8:45 am]

BILLING CODE 6210-01-M

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 January 25, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Capstone Bancshares, Inc.*, Tuscaloosa, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of South Alabama Holding Company, Inc., and thereby indirectly acquire Southwest Bank of Alabama, both of McIntosh, Alabama.

Board of Governors of the Federal Reserve System, December 21, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7-25274 Filed 12-28-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—11/05/2007			
20080136	H.I.G. Capital Partners IV, L.P	Raytheon Company	Flight Options LLC, Newco.
20080150	Saw Mill Capital Partners, L.P	Bessemer Securities LLC	AdMart Attractions, Inc., Business Stationery LLC, Graphics Systems, Inc., Identity Group, LLC, IDG, LLC, Redi-Tag Corporation, Scott Sign Systems, Inc., SigLet, Inc.
Transactions Granted Early Termination—11/06/2007			
20080077	SPO Partners II, L.P	Martin Marietta Materials, Inc	Martin Marietta Materials, Inc.
20080113	Morgan Stanley	Royal Ahold	Tops Markets, LLC.
20080117	SAP AG	Business Objects S.A	Business Objects S.A.
Transactions Granted Early Termination—11/07/2007			
20080075	Platinum Equity Capital Partners II, L.P.	PPG Industries, Inc	PPG Industries, Inc.
Transactions Granted Early Termination—11/08/2007			
20080081	2151000 Ontario Inc	Husky Injection Molding Systems Ltd	Husky Injection Molding Systems Ltd.
20080140	Cognizant Technology Solutions Corporation.	marketRx, Inc	marketRx, Inc.
20080141	E.ON AG	NTR plc	Airtricity, Inc.
Transactions Granted Early Termination—11/09/2007			
20080157	WLR Recovery Fund IV, L.P	American Home Mortgage Investment Corporation.	American Home Mortgage Corp., American Home Mortgage Servicing Inc.
20080170	Partners Limited	Redding Management, Inc	Redding Management, Inc.
20080174	Permira IV L.P.2	Arysta Life ScienceCorporation	Arysta Life ScienceCorporation.
20080175	USPF III Leveraged Feeder, L.P	Michigan Cogeneration Systems, Inc	Michigan Cogeneration Systems, Inc.
20080177	Sheridan Production Partners I-B, L.P.	Helios Energy Partners I L.P	Aethon I L.P.
20080179	Dennis R. Washington	Washington Group International, Inc	Washington Group International, Inc.
20080182	Mr. Fayeze Sarofim	eHarmony.com	eHarmony.com.
Transactions Granted Early Termination—11/13/2007			
20080180	Willbros Group, Inc	Integrated Service Company, LLC	Integrated Service Company, LLC.
Transactions Granted Early Termination—11/14/2007			
20080109	Halkos Holdings, LLC	Olin Corporation	A.J. Oster Caribe, Inc., A.J. Oster Company, A.J. Oster Foils, Inc., A.J. Oster West, Inc., Bryan Metals, Inc., Chase Brass & Copper Company, Incorporated, Chase Industries, Inc., LTC Reserve Corp., Olin Corporation, Olin Fabricated Metal Products, Inc., Waterburg Rolling Mills, Inc.
20080135	Nuance Communications, Inc	Thoma Cressey Fund VI, L.P	Viecore, Inc.
20080178	Discovery Holding Company	HowStuffWorks, Inc	HowStuffWorks, Inc.
Transactions Granted Early Termination—11/15/2007			
20071065	Schering-Plough Corporation	Akzo Nobel N.V	Organon BioSciences N.V.
Transactions Granted Early Termination—11/19/2007			
20080176	Williams Partners L.P	The Williams Companies Inc	Wamsutter LLC.
20080183	Cisco Systems, Inc	Navini Networks, Inc	Navini Networks, Inc.
20080189	2003 Riverside Capital Appreciation Fund, L.P.	Mr. Timothy R. Buhl	Aerco International, Inc.
20080190	2003 Riverside Capital Appreciation Fund, L.P.	Mr. Basem L. Hismeh	Aerco International, Inc.
20080119	Darwin Deason	Affiliated Computer Services, Inc	Affiliated Computer Services, Inc.

Trans #	Acquiring	Acquired	Entities
20080201	CHS Private Equity V L.P	Richard C. Morgan, Jr	ALC Licensing Group, LLC, ALC-Partner, Inc., American Aesthetic Equipment, LLC, American Laser Centers, LLC, AmeriPure, LLC.
20080203	The Providence Service Corporation	Charterhouse Equity Partners IV, L.P	Charter LCI Corporation.
20080205	Hellman & Friedman Capital Partners VI, L.P.	Goodman Global, Inc	Goodman Global, Inc.
200801210	ESCO Technologies Inc	The Frank C. Doble Wife's Trust	Doble Engineering Company.
20080211	EnCana Corporation	Thomas S. Kaplan	Leor Energy (Amoruso) LLC, Leor Energy (Amoruso Ranch) Holdings LLC, Leor Energy (Brazos) LLC, Leor Energy (Houston) LLC, Leor Energy (Navasota Resources) LLC.
20080213	The PNC Financial Services Group, Inc.	Albridge Solutions, Inc	Albridge Solutions, Inc.

Transactions Granted Early Termination—11/20/2007

20080123	Leeds Equity Partners IV, L.P	David Meek	Campus Management Corp.
20080144	Carl C. Icahn	Motricity, Inc	Motricity, Inc.
20080196	Linsalata Capital Partners Fund V, L.P.	Lund International Holdings, Inc	Autotron Accessories, Inc., Belmor Products, Inc., Deflect-A-Shield Accessories, Inc., Lund International Holdings, Inc., Lund International, Inc.
20080204	Transfield Services Limited	Michael Sullivan, Sr	Horizon National Commercial Services, LLC, Horizon National Contract Services, LLC, Horizon National Services, LLC, Horizon Western Contract Services, LLC.
20080206	Brian C. Rogers	T. Rowe Price Group, Inc	T. Rowe Price Group, Inc.
20080214	CSS Industries, Inc	C.R. Gibson, Inc	C.R. Gibson, Inc.
20080215	Harron Sharing Partners, L.P	Boston Ventures Limited Partnership VI.	Vista III Media, LLC.
20080218	Vestar Capital Partners V, L.P	Radiation Therapy Services, Inc	Radiation Therapy Services, Inc.
20080232	Genstar Capital Partners V, L.P	John Klaeb	Westline Corporation.

Transactions Granted Early Termination—11/21/2007

20080126	AT&T Inc	Aloha Partners, L.P	Aloha Partners, L.P., HIWIRE, LLC.
20080128	Stora Enso Oyj	NewPage Investments LLC	NewPage Group, Inc.
20080129	NewPage Investments LLC	Stora Enso Oyj	Stora Enso North America Inc.
20080172	EnergySouth, Inc	Theo B. Bean, Jr	Mississippi Hub, LLC.
20080194	Symantec Corporation	Vontu, Inc	Vontu, Inc.
20080212	HFA Holdings Limited	Sean G. McGould	Lighthouse Investment Partners, LLC.
20080225	Iron Mountain Incorporated	Stratify, Inc	Stratify, Inc.
20080227	HBK Offshore Fund Ltd	RTW, Inc	RTW, Inc.

Transactions Granted Early Termination—11/23/2007

20080234	Gaz de France	SUEZ	SUEZ.
----------------	---------------------	------------	-------

Transactions Granted Early Termination—11/27/2007

20080166	David H. Murdock	Gene Haas	Inland Logistics 2, LLC.
20080167	David H. Murdock	William J. Hendricksen and Patricia Hendricksen.	Inland Logistics, LLC.
20080193	The Clorox Company	HSBC Holdings plc	Burt's Bees, Inc.
20080209	Electronic Data Systems Corporation	Saber Holdings, Inc	Saber Holdings, Inc.
20080220	Canadian Pension Plan Investment Board.	Puget Energy, Inc	Puget Energy, Inc.
20080221	Dubai Holding LLC	Rhone Offshore Capital Partners II, L.P.	Almatis Holdings 3 B.V.
20080237	GS Maritime Holding LLC	TECO Energy, Inc	TECO Transport Corporation.
20080242	Time Warner Inc	Jonathan Burton	TT Games Limited.
20080248	AIF VI Euro Holdings L.P	The Marilyn Carlson nelson 1998 GST Family Trust.	Celtic Pacific Holdings (UK) Limited, Golden Ocean Line Limited, Newco LLC, Regent Seven Seas Cruises, Inc., Regent Seven Seas Cruises UK Limited.

Trans #	Acquiring	Acquired	Entities
20080249	AIF VI Euro Holdings L.P	The Barbara Carlson Gage 1998 GST Family Trust.	Celtic Pacific Holdings (UK) Limited, Golden Ocean Line Limited, Newco LLC, Regent Seven Seas Cruises, Inc., Regent Seven Seas Cruises UK Limited.
20080025	PODS Holding, Inc	PODS, Inc	PODS, Inc.
20080254	Sumitomo Rubber Industries, Ltd	Quiksilver, Inc	Roger Cleveland Golf Company, Inc.
20080259	Blue Cross and Blue Shield of Massachusetts.	Blue Cross and Blue Shield of Florida, Inc.	USable Life.
20080260	Blue Cross and Blue Shield of Massachusetts, Inc.	Arkansas Blue Cross and Blue Shield.	USable Life.
20080275	Sector Performance Fund, L.P	LaSalle Capital Group, L.P	Advanced H2O Holdings LLC.

Transactions Granted Early Termination—11/28/2007

20081838	Barry O'Callaghan	Reed Elsevier NV	Achieve Data Solutions LLC, Classroom Connect Inc., Foundation Marine Animal Husbandry Inc., Greenwood Publishing Group Inc., Harcourt Inc., HRW Distributors Inc., Reed Elsevier UK Ltd., Steck-Vaughn Publishing LLC.
20080152	The Doctors Company, an Interinsurance Exchange.	SCPIE Holdings, Inc	SCPIE Holdings, Inc.

Transactions Granted Early Termination—11/29/2007

20080192	Oak Hill Capital Partners III, L.P	Forgings International L.P	Forgings International L.P.
20080240	Cooper Industries, Ltd	SurePower, Inc	SurePower, Inc.
20080241	O. Bruton Smith	Robert P. Bahre	New Hampshire Speedway, Inc.
20080263	Providence Equity Partners VI L.P ..	Donald W. Jones	J&B DS LLC, J&B Sales Corp., Jones and Bartlett Publishers Business Trust, Jones and Bartlett Publishers, Inc.
20080279	Computer Sciences Corporation	First Consulting Group, Inc	First Consulting Group, Inc.
20080281	Spherion Corporation	Charlesbank Equity Fund V, Limited Partnership.	Intellimark Holdings, Inc.

Transactions Granted Early Termination—12/03/2007

20080278	SAS Rue La Boetie	Societe Generale S.A	Fimat International Banque S.A.
20080280	Societe Generale S.A	SAS Rue La Boetie	Calyon North America Holdings, Inc.
20080292	ABX Air, Inc	Cargo Holdings International, Inc	Cargo Holdings International, Inc.
20080297	Ruth's Chris Steak House, Inc	Cameron Mitchell Restaurants, LLC	Cameron Mitchell Restaurants, LLC
20080298	Youngor Group Co. Ltd	Kellwood Company	Smart Apparel Group Limited, Xin Ma Apparel International Ltd.
20080301	Mr. George David	United Technologies Corporation	United Technologies Corporation.
20080306	Hewlett-Packard Company	TA IX L.P	EYP Mission Critical Facilities, Inc.
20080314	Millennium Digital Media Holdings, L.L.C.	Golden Tree Asset Management, LLC.	James Cable, LLC.
20080315	American Securities Partners IV, L.P	Silver Point Capital Offshore Fund, Ltd.	FiberMark North America, Inc., FiberMark Red Bridge International Ltd.
20080318	Bilfinger Berger Industrial Services AG.	Churchill Equity and ESOP Capital Partners II, L.P.	TSC Holding Company, LLC.
20080319	International Business Machines Corporation.	Cognos Incorporated	Cognos Incorporated.
20080331	AT&T Inc	Ingenio, Inc	Ingenio, Inc.

Transactions Granted Early Termination—12/04/2007

20080187	Honeywell International Inc	HKW Capital partners II, L.P	Maxon Corporation.
20080230	Robert Price	Ford Motor Company	Automotive Component Holdings, LLC.
20080246	CCC Steel GmbH & Co. KG	MAN AG	Ferrosstaal Metals GmbH.
20080258	Albert G. Lowenthal	Canadian Imperial Bank of Commerce.	CIBC World Markets Corp.
20080291	The Bear Stearns Companies Inc	Knight Holdco LLC	KN Cogeneration, Inc., KN Thermo Acquisition, Inc.
20080300	KMG Chemicals, Inc	Air Products and Chemicals, Inc	Air Products and Chemicals, Inc.
20080312	Iberdrola, S.A	Denham Commodity Partners Fund IV L.P.	Freebird Assets, Inc., Freebird SHA, LLC.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/05/2007			
20080184	Nokia Inc.	NAVTEQ Corporation	NAVTEQ Corporation.
20080202	Omniure, Inc.	Visual Sciences, Inc.	Visual Sciences, Inc.
20080290	Nycomed S.C.A. SICAR	Daniel Glassman	Bradley Pharmaceuticals, Inc.
20080295	CHRISTUS Health	McKenna Health System	McKenna Health System.
20080307	Providence Equity Partners V L.P. ...	Donald L. Merrill	AMR/Arlington Medical Resources, Inc.
20080308	Providence Equity Partners V L.P. ...	K. Paul Ferris	AMR/Arlington Medical Resources, Inc.
20080320	Wicks Communications & Media Partners III, L.P..	The Gordian Group, Inc. ESOP and Trust.	The Gordian Group, Inc.
Transactions Granted Early Termination—12/06/2007			
20080256	ON Semiconductor Corporation	Analog Devices, Inc.	Analog Devices, Inc.
20080271	Matsushita Electric Industrial Co., Ltd	Littlejohn Fund II, L.P.	ULT Holdings, Inc.
Transactions Granted Early Termination—12/07/2007			
20080329	Macrovision Corporation	Yucaipa One-Stop Partners, L.P.	All Media Guide Holdings, Inc.
20080334	Trust f/b/o Lee Bordes u/a FIVE o/t Will of Peter A. Bordes.	Lincoln National Corporation	Lincoln Financial Media Company of North Carolina.
20080346	Prudential Financial Inc.	Mitsubishi UFJ Financial Group, Inc.	Union Bank of California, N.A.
20080353	The Nutting Company, Inc.	Nutting 1997 Trust	The Nutting Newspapers, Inc.
20080369	Citadel Kensington Global Strategies Fund Ltd.	E*TRADE Financial Corporation	E*TRADE Financial Corporation.
Transactions Granted Early Termination—12/10/2007			
20080143	Motricity, Inc.	InfoSpace, Inc.	InfoSpace, Inc.
20080265	GSS Contract Services XXI, Inc.	Broadway Generating Company, LLC.	Bosque Power Company, LLC, LSP Bosque Blocker II, Inc., LSP Bosque Blocker I, Inc.
20080283	Hilltop Holdings Inc.	Downey Financial Corp	Downey Financial Corp.
20080342	Fidelity Capital Operating Limited Partnership.	HD Supply, Inc.	Cox Lumber Corp., Madison LLC, Park LLC, Williams Bros. Lumber Co., LLC.
Transactions Granted Early Termination—12/11/2007			
20080282	The Day & Zimmermann Group, Inc.	SOC-SMG, Inc.	SOC-SMG, Inc.
20080287	Valve (RMG) LuxCo S.a.r.l	Gareth Y. Hudson	Mercury Instruments, Inc.
20080333	Highland Crusader Fund II, Ltd	Solutia Inc.	Solutia Inc.
20080335	Astellas Pharma Inc.	Agensys, Inc.	Agensys, Inc.
20080340	Silver Lake Partners III, L.P.	Gerson Lehman Group, Inc.	Gerson Lehman Group, Inc.
20080348	Nustar Energy, L.P.	Petroleos De Venezuela, S.A	Citgo Asphalt Refining Company.
20080356	Fundacion MAPFRE	The Commerce Group, Inc.	The Commerce Group, Inc.
Transactions Granted Early Termination—12/12/2007			
20080231	Falcon Mezzanine Partners II	Roy K. Landgren	Sunrise Electric Supply, Inc.
20080349	Genesis Energy, L.P.	Denbury Resources Inc.	Denbury Onshore L.L.C.
20080359	Iconix Brand Group, Inc.	Phillip H. Knight	Exeter Brands Group LLC.
Transactions Granted Early Termination—12/13/2007			
20080253	Nokia Corporation	Atrica, Inc.	Atrica, Inc.
20080266	Genstar Capital Partners V, L.P.	TravelCLICK Holdings, Inc.	TravelCLICK Holdings, Inc.
20080311	GlaxoSmithKline plc	Reliant Pharmaceuticals, Inc.	Reliant Pharmaceuticals, Inc.
20080344	Macquarie Group Limited	C. Gregory Evans, II	Universal Weather and Aviation, Inc.
20080370	The Resolute Fund, L.P.	Haas TCM Inc.	Haas TCM Inc.
20080371	The Resolute Fund II, L.P.	Haas TCM Inc.	Haas TCM Inc.
Transactions Granted Early Termination—12/14/2007			
20080273	Agilent Technologies, Inc.	Velocity11	Velocity11.
20080289	Catholic Healthcare Partners	Tennessee Baptist Convention	The Baptist Health System of East Tennessee, Inc.
20080364	SPO Partners II, L.P.	Calpine Corporation	Calpine Corporation.
20080366	Luminum Energy Partners QP, L.P.	Calpine Corporation	Calpine Corporation.
20080367	LS Power Equity Partners, L.P.	Calpine Corporation	Calpine Corporation.
20080368	San Francisco Partners II, L.P.	Calpine Corporation	Calpine Corporation.

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative; Federal Trade Commission; Premerger Notification Office, Bureau of Competition, ROOM H-303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07-6234 Filed 12-28-07; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice; publication of an updated GSA system of records notice that includes a new routine use and updated administrative changes, including system managers, office titles, addresses, or locations.

SUMMARY: GSA reviewed this Privacy Act system to ensure it was relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. Also, it was updated in response to OMB M-07-16.

EFFECTIVE DATES: Effective December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the Privacy Act Officer: telephone (202) 208-1317; e-mail gsa.privacy.act@gsa.gov.

ADDRESSES: Comments may be submitted to the System Development and Support Division of the Office of Inspector General (JPM). The mailing address is: General Services Administration (JPM), 1800 F Street, NW., Washington DC 20405.

SUPPLEMENTARY INFORMATION: GSA reviewed this Privacy Act system of record to ensure that it is relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. Nothing in the updated system notice indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the system of records. It also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: December 14, 2007

Cheryl M. Paige,

Director, Office of Information Management.

GSA/ADM-24

SYSTEM NAME:

Investigation Case Files.

SECURITY CLASSIFICATION:

Some of the material contained in the system has been classified in the interests of national security pursuant to Executive Order 11652.

SYSTEM LOCATION:

This system is located in the GSA Office of Inspector General, 1800 F Street, NW., Washington, DC 20405. The database for the system, known as the IG—Investigative Documentation Electronic Administrative System (IG—IDEAS), is on a local area network in the GS Building and is operated by the System Development and Support Division of the Office of Inspector General (JPM). The backup tapes for the system are stored at the Mid-Atlantic Investigations Office, 300 D Street, SW., Washington, DC 20024. Some interim reports are filed in the Suspension and Debarment Division, Office of the Chief Acquisition Officer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are employees, former employees, and applicants for employment with GSA, as well as commissions, committees and small agencies serviced by GSA. The system also includes historical researchers, employees of contractors performing custodial or guard services in buildings under GSA control, any person who was the source of a complaint or an allegation that a crime had taken place, a witness who has information or evidence on any side of an investigation, and any possible or actual suspect in a criminal, administrative (including suspension and/or debarment actions), or civil action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files containing personal information, including name, date, and place of birth, experience, and investigative material that is used as a basis for taking civil, criminal, and administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App.3, section 2, *et seq.*

PURPOSE:

The system serves as a basis for taking civil, criminal, and administrative actions, including the issuance of

subpoenas, security clearances, suitability determinations, suspension and debarment recommendations and similar authorized activities.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

Records are used by GSA officials and representatives of other government agencies on a need-to-know basis in the performance of their official duties under the authorities set forth above and for the following routine uses:

a. A record of any case in which there is an indication of a violation of law, whether civil, criminal, or regulatory in nature, may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such a violation or charge with enforcing or implementing the law.

b. A record may be disclosed to a Federal, State, local, or foreign agency or to an individual organization in the course of investigating a potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparing for a trial or hearing for such a violation, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, and disclosing the information is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

c. A record relating to a case or matter may be disclosed in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive or procedural law or practice, even when the agency is not a party to the litigation.

d. A record relating to a case or matter may be disclosed to an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on matters such as settlement of the case or matter, plea-bargaining or informal discovery proceedings.

e. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement or that involves a case or matter within the jurisdiction of any agency may be disclosed to the agency to notify it of the status of the case or matter or of any decision or determination that has been made or to make such other inquiries and reports as are necessary during the processing of the case or matter.

f. A record relating to a case or matter may be disclosed to a foreign country

pursuant to an international treaty or convention entered into and ratified by the United States, or to an Executive agreement.

g. A record may be disclosed to a Federal, State, local, foreign or international law enforcement agency to assist in crime prevention and detection or to provide leads for investigation.

h. A record may be disclosed to a Federal, State, local, foreign, or tribal or other public authority in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuing of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

i. A record may be disclosed to the public, news media, trade associations, or organized groups when the purpose is educational or informational, such as describing crime trends or distinctive or unique modus operandi, provided that the record does not identify a specific individual.

j. A record may be disclosed to an appeal or grievance examiner, formal complaints examiner, equal opportunity investigator, arbitrator, or other authorized official engaged in investigation or settlement of matters and investigations involving the Merit Systems Protection Board or the Office of Special Counsel.

k. A record may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the person who is the subject of the record.

l. Information may be disclosed at any stage of the legislative coordination and clearance process to the Office of Management and Budget (OMB) for reviewing of private relief legislation as set forth in OMB Circular No. A-19.

m. A record may be disclosed: (a) To an expert, a consultant, or contractor of GSA engaged in a duty related to an agency function to the extent necessary to perform the function; and (b) to a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

n. A record may be disclosed to an official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency and officials and administrative staff within their

investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

o. A record relating to a case may be disclosed to the GSA Office of Acquisition Policy for a decision or determination regarding suspension and debarment measures taken by the Government to disqualify contractors from participation in Government contracting or subcontracting.

p. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency 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 GSA 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 GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

q. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

r. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

s. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in files and file folders. Electronic records are stored in an electronic database or on hard or floppy disks and tapes.

RETRIEVABILITY:

Paper records are retrievable manually by name from files indexed alphabetically and filed numerically by location and incident. Electronic records are retrievable by case number or by full or partial name.

SAFEGUARDS:

Paper records are stored in locked rooms with access limited to authorized personnel. Computer based records are

available only to authorized users with a need to know and are protected by a network logon password, user password, and restricted right of access to the software, system, file, data element, and report.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning, as scheduled in the HB, GSA Maintenance and Disposition System (OAD P 1820.2A), and the records schedules authorized by that system.

SYSTEM MANAGER AND ADDRESS:

The system manager is the System Development and Support Division of the Office of Inspector General (JPM). The mailing address is: General Services Administration (JPM), 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

An individual who wishes to be notified whether the system contains a record concerning him or her should address a request to the Office of Counsel to the Inspector General (JC), General Services Administration, Room 5324, 1800 F Street, NW., Washington, DC 20405.

RECORD ACCESS PROCEDURES:

An individual seeking access to a record should put his or her request in writing and address it to the Office of Counsel to the Inspector General (JC), including full name (maiden name if appropriate), address, and date and place of birth. General inquiries may be made by calling the Office of Counsel to the Inspector General on (202) 501-1932.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the content of a record or appealing a denial of a request to amend a record are in 41 CFR part 105-64 published in the **Federal Register**.

RECORD SOURCE CATEGORIES:

The sources are individuals themselves, employees, informants, law enforcement agencies, other government agencies, employers, references, co-workers, neighbors, educational institutions, and intelligence sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(j), this system of records is exempt from all provisions of the Privacy Act of 1974 with the exception of subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the Act, to the extent that information in the system pertains to the enforcement of criminal laws, including

police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or (c) reports of enforcement of the criminal laws, from arrest or indictment through release from supervision. This system is exempted to maintain the efficacy and integrity of the Office of Inspector General's law enforcement function. In accordance with 5 U.S.C. 552a(k), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4); (G), (H), and (I); and (f) of the Privacy Act of 1974.

THE SYSTEM IS EXEMPT:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes. However, if an individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence; and

b. To the extent the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of

such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence. This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Office of Inspector General's law enforcement responsibilities and responsibilities in the areas of Federal employment, government contracts, and access to security classified information.

[FR Doc. E7-25425 Filed 12-28-07; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above,

e-mail your request, including your address, phone number, OMB number, and OS document identifier, to Sherette.funncoleman@hhs.gov, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project—Annual Appellant Climate Survey—0990-NEW—Office of Medicare Hearings and Appeals (OMHA).

Abstract: The first annual OMHA Appellant Climate Survey is a survey of Medicare beneficiaries, providers, and suppliers who had a hearing before an Administrative Law Judge (ALJ) at the Office of Medicare Hearings and Appeals (OMHA). Appellants dissatisfied with the outcome of their Level 2 appeal may request a hearing before an OMHA ALJ. The Appellant Climate Survey will be used to measure appellant satisfaction with their OMHA appeals experience, as opposed to their satisfaction with a specific ruling.

OMHA was established by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108-173) and became operational on July 1, 2005. The MMA legislation and implementing regulations issued on March 8, 2007 instituted a number of changes in the appeals process. The MMA legislation also directed the U.S. Department of Health and Human Services to consider the feasibility of conducting hearings using telephone or video-teleconference technologies. In carrying out this mandate, OMHA makes extensive use of video-teleconferencing to provide appellants with a vast nationwide network of access points for hearings close to their homes. The survey will gauge appellants' satisfaction with this new service along with the overall appeals experience. The OMHA survey will be conducted annually over a three-year period, beginning in FY08. Results from the surveys will be used to gauge progress made in increasing satisfaction among appellants.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
OMHA Appellant Climate Survey	Appellants	400	1	11/60	73

Dated: November 26, 2007.

Terri Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7-25383 Filed 12-28-07; 8:45 am]

BILLING CODE 4150-46-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10232]

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB); Correction

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

ACTION: Correction of notice.

SUMMARY: This document corrects a technical error in the notice [Document Identifier: CMS-10232] entitled "State Plan Template to Implement Section 6062 of the Deficit Reduction Act (DRA) of 2005" that was published in the December 7, 2007 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Melissa Musotto, (410) 786-6962.

SUPPLEMENTARY INFORMATION:

I. Background

In the FR Doc. E7-23746 of December 7, 2007 (72 FR 69218), we published a Paperwork Reduction Act notice requesting a 30-day public comment period for the document entitled "State Plan Template to Implement Section 6062 of the Deficit Reduction Act of 2005."

In the date December 7, 2007 notice, we inadvertently included information pertaining to another new collection (CMS-10251). Therefore, we are correcting that error in this notice.

II. Correction of Error

In FR Doc. E7-23746 of December 7, 2007 (72 FR 69218), make the following correction:

On page 69218, first column, second full paragraph beginning with the phrase "1. Type of Information Collection" and ending with figure "600" is corrected to read as follows:

"1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Plan Template to Implement Section 6062 of the Deficit Reduction Act (DRA) of 2005; *Use:* The DRA provides States with numerous flexibilities in operating their State Medicaid Programs. Section 6062 of the DRA (Opportunity for families of Disabled Children to

Purchase Medicaid Coverage for Such Children) allows States the opportunity to provide Medicaid benefits to disabled children who would otherwise be ineligible because of family income that is above the State's highest Medicaid eligibility standards for children. It specifically allows families with disabled children to "buy-in" to Medicaid, and prevents them from having to stay impoverished, become impoverished, place their children in out-of-home placements, or simply give up custody of their child in order to access needed health care for their disabled children.

Under the DRA, States must submit a SPA to CMS to effectuate this change to their Medicaid programs. CMS will provide a State Medicaid Director letter providing guidance on this provision and the associated SPA template for use by States to modify their Medicaid State Plans if they choose to implement this provision. Providing the State with this SPA template will reduce State burden significantly. *Form Numbers:* CMS-10232 (OMB #: 0938-NEW); *Frequency:* Reporting—Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 30; *Total Annual Hours:* 600.

Dated: December 26, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 07-6256 Filed 12-26-07; 2:15 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions; Notice of Grant

Program Office: Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS-2008 ACF-ACYF-SDVC-0122.

Announcement Title: Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions.

CFDA Number: 93.591.

Due Date for Applications: January 30, 2008.

Executive Summary: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act (FVPSA) to private, non-

profit State Domestic Violence Coalitions (Coalitions). The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This notice for family violence prevention and services grants to Coalitions serves two purposes. The first is to confirm a Federal commitment to reducing domestic violence; and the second purpose is to urge States, localities, cities, and the private sector to become involved in State and local planning towards an integrated service delivery approach.

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Pub L. 98-457, 42 U.S.C. 10401 *et seq.*) is entitled the "Family Violence Prevention and Services Act" (FVPSA). FVPSA was first implemented in Fiscal Year (FY) 1986. The statute was subsequently amended by Public Law 100-294, the "Child Abuse Prevention, Adoptions, and Family Services Act of 1988;" further amended in 1992 by Public Law 102-295, the "Child Abuse, Domestic Violence, Adoption, and Family Services Act;" and then amended in 1994 by Public Law 103-322, the "Violent Crime Control and Law Enforcement Act." FVPSA was amended again in 1996 by Public Law 104-235, the "Child Abuse Prevention and Treatment Act (CAPTA);" in 2000 by Public Law 106-386, the "Victims of Trafficking and Violence Protection Act," and amended further by Public Law 108-36, the "Keeping Children and Families Safe Act of 2003." FVPSA was most recently amended by Public Law 109-162, the "Violence Against Women and Department of Justice Reauthorization Act of 2005" as amended by Public Law 109-271, which was enacted on August 17, 2006.

Background

Section 311 of FVPSA authorizes the U.S. Department of Health and Human Services (HHS) Secretary to award grants to statewide, private, non-profit State Domestic Violence Coalitions (Coalitions) to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

Annual State Domestic Violence Coalition Grantee Conference

Coalitions should plan to send one or more representatives to the annual grantee conference. Subsequent correspondence will advise Coalition

administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims of domestic violence and their children. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (see Section 303(a)(2)(E)).

The confidentiality provisions described at 42 U.S.C. Sec. 13701, apply to programs funded by the Violence Against Women Act, as amended, including certain awards made under the Family Violence Prevention and Services Act. These confidentiality requirements were strengthened and clarified with the passage of the Violence Against Women Reauthorization Act of 2005, Public Law 109-162, as amended by Public Law 109-271. The revised confidentiality provisions impose conditions regarding the disclosure of personally identifying information, confidentiality, information sharing, and compulsory release of information.

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by Public Law 107-62, the "Stamp Out Domestic Violence Act of 2001" (the Act) to make available a "semipostal" stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to HHS in accordance with the Act for support of services to children and youth affected by domestic violence. As of FY 2007, \$3.2 million has been transferred and made available in support of grants for "Demonstration Programs for Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence." Projects in nine States and communities have been funded to develop and test new intervention models for children who witness domestic violence and their parents, and to increase direct services for these families in domestic violence and other community-based programs. ACF anticipates developing a collection of promising practices emerging from these demonstration projects.

The Importance of Coordination of Services

The impacts of domestic violence include physical injury and death of

primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, HHS urges the designated Coalitions receiving funds under this grant announcement to continue to coordinate activities funded under this grant with other new and existing resources (including community and faith-based organizations) that focus on the prevention of domestic violence and related issues.

National Data Collection and Outcomes Measurement

The need to accurately communicate reliable and appropriate data that captures the impact of domestic violence prevention and intervention efforts and to provide shelters, States, State Domestic Violence Coalitions, Tribes, and Tribal organizations with tools for self-assessment continues through FVPSA Program participation in the Documenting our Work (DOW) Initiative, a collaboration among the National Resource Center on Domestic Violence, and selected representatives from the coalitions and national domestic violence organizations. In collaboration with our partners at the State FVPSA programs, State Domestic Violence Coalitions, Tribes, and Tribal organizations, and experts on both data collection and domestic violence prevention issues, the effort to develop informative, succinct, and non-burdensome reporting formats continues. During FY 2007, in concert with State FVPSA administrators, State Domestic Violence Coalitions, and local service providers, the FVPSA Program revised and defined the program services reporting components for recipients of FVPSA State Formula Grant funds and piloted outcome data collection in four States. Throughout FY 2008, grantee workshops, teleconferences, and information

memoranda will provide further guidance on future performance reporting requirements for these grantees.

II. Funds Available

In FY 2008, HHS will make 10 percent of the amount appropriated under section 310(a)(1) of the FVPSA, which is not reserved under section 310(a)(2), available for grants to the State-designated, statewide, domestic violence Coalitions. One grant will be available for each of the Coalitions in the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. The Coalitions of the U.S. Territories (Guam, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for grant awards under this announcement.

Expenditure Period

FVPSA funds may be used for expenditures on or after October 1 of each fiscal year for which they are granted and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2008 funds may be used for expenditures from October 1, 2007, through September 30, 2009. Funds are available for obligation only through September 30, 2008, and must be liquidated by September 30, 2009.

III. Eligibility

To be eligible for grants under this program announcement, an organization shall be designated as a statewide, private, non-profit Domestic Violence Coalition meeting the following criteria (section 311(b)):

(1) The membership of the Coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a Coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act) (section 311(f));

(2) The Board membership of the Coalition is representative of such programs;

(3) The purpose of the Coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services for victims of domestic violence and their children; and

(4) In the application submitted by the Coalition for the grant, the Coalition provides assurances satisfactory to the Secretary that the Coalition:

(a) Has actively sought and encouraged the participation of law

enforcement agencies and other legal or judicial entities in the preparation of the application; and

(b) Will actively seek and encourage the participation of such entities in the activities carried out with the grant.

Additional Information on Eligibility

D-U-N-S Requirement

All applicants must have a D&B Data Universal Numbering System (D-U-N-S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D-U-N-S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D-U-N-S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, www.Grants.gov. A D-U-N-S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that the applicant organization has a D-U-N-S number. To acquire a D-U-N-S number, call the dedicated toll-free D-U-N-S number request line at 1-866-705-5711 or request a number on-line at: <http://www.dnb.com>. There is no cost to request or acquire a D-U-N-S number.

Survey for Private Non-Profit Grant Applicants

Private, non-profit organizations are encouraged to submit with their applications the survey titled "Survey on Ensuring Equal Opportunity for Applicants" found under the "Survey" heading at: http://www.acf.hhs.gov/grants/grants_resources.html.

IV. Application Requirements for State Domestic Violence Coalition (Coalitions) Applications

This section includes application requirements for FVPSA grants for Coalitions, as follows:

The Paperwork Reduction Act of 1995 (Pub. L. 104-13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under the Office of Management and

Budget (OMB) control number 0970-0280, which expires October 31, 2008. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form and Content of Application Submission

The Coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information: (We have cited each requirement to the specific section of the law.)

(1) A description of the process and anticipated outcomes of utilizing these Federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

Training and technical assistance for local programs and professionals working in the field:

(a) Planning and conducting State needs assessments and planning for comprehensive services;

(b) Serving as an information clearinghouse and resource center for the State; and

(c) Collaborating with other governmental systems that affect battered women (Section 311(a)(1)).

(2) A description of the public education campaign regarding domestic violence to be conducted by the Coalition through the use of public service announcements and informative materials that are designed for print media; billboards; public transit advertising; electronic broadcast media; and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (Section 311(a)(4)).

(3) The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of related issues as set forth in Section 311(a)(2) of the FVPSA.

(4) The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with Family Law Judges, Criminal Court Judges, Child Protective Services agencies, Child Welfare agencies, Family Preservation and Support Service agencies, and children's advocates to develop appropriate responses to child custody and

visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present including the appropriate responses identified in section 311(a)(3) of the FVPSA. The anticipated outcomes and a description of other activities in support of the general purpose of furthering domestic violence intervention and prevention (Section 311(a)(3)).

(5) The following documentation will certify the status of the Coalition and must be included in the grant application:

(a) A description of the procedures developed between the State domestic violence agency and the statewide Coalition that allow for implementation of the following cooperative activities:

(i) The participation of the Coalition in the planning and monitoring of the distribution of grants and grant funds provided in the State (Section 311(a)(5)); and

The participation of the Coalition in compliance activities regarding the State's family violence prevention and services program grantees (Sections 303(a)(2)(C) and (a)(3)).

Unless already on file at HHS, a copy of a currently valid 501(c)(3) certification letter from the IRS stating private, non-profit status; or a copy of the applicant's listing in the IRS' most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; or a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled;

(c) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant Coalition's current membership list by organization;

(d) A list of the applicant Coalition's current Board of Directors, with each individual's organizational affiliation and the Chairperson identified;

(e) A list of any Coalition or contractual staff to be supported by funds from this grant; and

(f) A budget narrative that clearly describes the planned expenditure of funds under this grant.

(6) Required Documentation and Assurances (included in the application as an attachment):

(a) The applicant Coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the Coalition:

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation

of the grant application (Section 311(b)(4)(A)); and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (Section 311(b)(4)(B)).

(b) The applicant Coalition must provide a signed statement that the Coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive Order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State, or local legislative body, or State proposals by initiative petition, except where representatives of the Coalition are testifying, or making other appropriate communications, either when formally requested to do so by a legislative body, a committee, or a member of such organization (Section 311(d)(1)); or in connection with legislation or appropriations directly affecting the activities of the Coalition or any member of the Coalition (Section 311(d)(2)).

(c) The applicant Coalition must provide a signed statement that the Coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (Section 307).

(d) The applicant will comply with Departmental requirements for the administration of grants under 45 CFR Part 74—Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-profit Organizations and Commercial Organizations.

Certifications

All applicants must submit or comply with the required certifications found in the Appendices, as follows:

Anti-Lobbying Certification and Disclosure Form must be signed and submitted with the application (*See Appendix A*): Applicants must furnish prior to award an executed copy of the Standard Form (SF) LLL, *Certification Regarding Lobbying*, when applying for an award in excess of \$100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (*See*

Appendix B): The Pro-Children Act of 1994, 20 U.S.C. 7183, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are subject to these requirements only if they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with Federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

Certification Regarding Drug-Free Workplace Requirements (*See Appendix C*): The signature on the application by the program official attests to the applicants' intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application.

These certifications also may be found at: http://www.acf.hhs.gov/grants/grants_resources.html.

Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

Applications should be sent to: Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Marylouise Kelley,

1250 Maryland Avenue, SW., Room 8215, Washington, DC 20024.

V. Reporting Requirements

Performance Reports

The Coalition grantee must submit an annual report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out. Additionally, the Coalition must report on the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the State child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities. The annual report is due 90 days after the end of the fiscal year in which the grant is awarded, i.e., December 29. Annual reports should be sent to: Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Marylouise Kelley, 1250 Maryland Avenue, SW., Room 8215, Washington, DC 20024.

Please note that HHS may suspend funding for an approved application if any applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2008. The final SF–269A is due December 29, 2009. SF–269A can be found at: http://www.whitehouse.gov/omb/grants/grants_forms.html.

Completed reports should be sent to: Manolo Salgueiro, Division of Mandatory Grants, Office of Grants Management, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

Grantees have the option to submit their reports online through the Online Data Collection (OLDC) system: <https://extranet.acf.hhs.gov/ssi>. Failure to submit reports on time may be a basis for withholding grant funds, suspension or termination of the grant. In addition, all funds reported after the obligation period will be recouped.

VI. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at: <http://www.hhs.gov/fbc/waisgate21.pdf>.

A faith-based organization receiving HHS funds retains its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities.

Faith-based and community organizations may reference the "Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government" at: <http://www.whitehouse.gov/government/fbc/guidance/index.html>.

VII. Other Information

FOR FURTHER INFORMATION CONTACT:

Marylouise Kelley at (202) 401-5756 or e-mail at Marylouise.Kelley@acf.hhs.gov.

Dated: December 20, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendices: Required Certifications

- A. Anti-Lobbying and Disclosure
- B. Environmental Tobacco Smoke

C. Drug-Free Workplace Requirements

Appendix A

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Appendix B

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F., Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office,

performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. E7-25335 Filed 12-28-07; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants for Battered Women's Shelters/Grants to States; Notice of Grant

Program Office: Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS-2008-ACF-ACYF-FVPS-0123.

Announcement Title: Family Violence Prevention and Services/Grants for Battered Women's Shelters/Grants to States.

CFDA Number: 93.671.

Due Date for Applications: January 30, 2008.

Executive Summary: This announcement governs the proposed award of mandatory grants under the Family Violence Prevention and Services Act (FVPSA) to States (including Territories and Insular Areas). The purpose of these grants is to assist States in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2008.

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984, Pub. L. 98-457, 42 U.S.C. 10401 *et seq.* is entitled the "Family Violence Prevention and Services Act" (FVPSA). FVPSA was first implemented in FY 1986. The statute was subsequently amended by Public Law 100-294, the "Child Abuse Prevention, Adoptions, and Family Services Act of 1988;" further amended in 1992 by Public Law 102-295, the "Child Abuse, Domestic Violence, Adoption, and Family Services Act" and then amended in 1994 by Public Law 103-322, the "Violent Crime Control and Law Enforcement Act." FVPSA was amended again in 1996 by Public Law 104-235, the "Child Abuse Prevention and Treatment Act (CAPTA);" in 2000 by Public Law 106-386, the "Victims of Trafficking and Violence Protection Act," and amended further by Public Law 108-36, the "Keeping Children and Families Safe Act of 2003." FVPSA was most recently amended by Public Law 109-162, the "Violence Against Women and Department of Justice Reauthorization Act of 2005" as amended by Public Law 109-271, which was enacted on August 17, 2006. FVPSA can be found at 42 U.S.C. 10401 *et seq.*

Background

The purpose of this legislation is to assist States and Indian Tribes, Tribal organizations, and non-profit private organizations approved by an Indian Tribe in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2007, 237 grants were made to States and Indian Tribes, Tribal organizations, and non-profit private organizations approved by Indian Tribes. The U.S. Department of Health and Human Services (HHS) also made 53 family violence prevention grant awards to non-profit State Domestic Violence Coalitions.

In addition, HHS supports the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The four SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of

Domestic Violence Against Native Women, and the Health Resource Center on Domestic Violence. The purposes of NRC and SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February 1996, HHS funded the National Domestic Violence Hotline (Hotline) to ensure that everyone has access to information and emergency assistance wherever and whenever it is needed. The Hotline is a 24-hour, toll-free service that provides crisis assistance, counseling, and local shelter referrals for people across the country who need assistance. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1-800-799-SAFE (7233); the TTY number for the hearing-impaired is 1-800-787-3224.

General Grant Program Requirements Applicable To States

Definitions

States should use the following definitions in carrying out their programs. The definitions are found in section 320 of FVPSA.

Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which: (a) Results or threatens to result in physical injury; and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance

for children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services provided by peers individually or in groups, and referral to community social services;

(c) Transportation and technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

Annual State Administrators Grantee Conference

The annual grantee conference for the State FVPSA Administrators is a training and technical assistance activity, and FVPSA State Administrators should plan to attend. Subsequent correspondence will advise the State FVPSA Administrators of the date, time and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (section 303(a)(2)(E)).

The confidentiality provisions described at 42 U.S.C., section 13701, apply to programs funded under the "Violence Against Women Act," as

amended, including certain awards made under the Family Violence Prevention and Services Act. These confidentiality requirements were strengthened and clarified with the passage of the Violence Against Women Reauthorization Act of 2005, Public Law 109-162, as recently amended by Public Law 109-271. The revised confidentiality provisions impose conditions regarding the disclosure of personally identifying information, confidentiality, information sharing, and compulsory release of information.

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the "Stamp Out Domestic Violence Act of 2001" (the Act), Public Law 107-62, to make available a "semipostal" stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to HHS in accordance with the Act for support of services to children and youth affected by domestic violence. As of FY 2007, \$3.2 million has been transferred and made available in support of grants for "Demonstration Programs for Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence." Projects in nine States and communities have been funded to develop and test new intervention models for children who witness domestic violence and their parents, and to increase direct services for these families in domestic violence and other community-based programs. ACF anticipates developing a collection of promising practices emerging from these demonstration projects.

The Importance of Coordination of Services

The impacts of domestic violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities. To help bring

about a more effective response to the problem of domestic violence, HHS urges the designated State agencies receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of domestic violence and related issues including community and faith-based organizations (section 303(a)(2)(B)(ii)).

National Data Collection and Outcomes Measurement

The need to accurately communicate reliable and appropriate data that capture the impact of domestic violence prevention and intervention efforts, and to provide shelters, States, Tribes, and State Domestic Violence Coalitions with tools for self-assessment, continues through FVPSA Program participation in the Documenting our Work (DOW) Initiative of the NRC. In collaboration with our partners at State FVPSA programs, State Domestic Violence Coalitions, Tribes and Tribal organizations, and experts on both data collection and domestic violence prevention and intervention issues, FVPSA is developing informative, succinct, and non-burdensome reporting formats. During FY 2007, in concert with State FVPSA administrators, State Domestic Violence Coalitions and local service providers, the FVPSA Program revised and defined the program services reporting components for recipients of FVPSA State Formula Grant funds and piloted outcome data collection in four States. Throughout FY 2008, grantee workshops, teleconferences, and information memoranda will provide further guidance on FVPSA Annual Performance Reports.

II. Funds Available

For FY 2008, HHS will make available for grants to designated State agencies 70 percent of the amount appropriated under section 310(a)(1) of FVPSA, which is not reserved under section 310(a)(2). In separate announcements, HHS will allocate 10 percent of the foregoing appropriation to Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services; and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, and advocacy services, among other activities, with local domestic violence programs and to encourage appropriate responses to domestic violence within the States.

Five percent of the amount appropriated under section 310(a)(1) of FVPSA, which is not reserved under section 310(a)(2), will be available in FY 2008 to continue the support for the NRC and the four SIRC's. Additional funds appropriated under FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects, as well as the ongoing operation of the Hotline.

State Allocation

FVPSA grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State grant shall be \$600,000 with the remaining funds allotted to each State on the same ratio as the population of the State has to the population of all States (section 304(a)(2)). State populations are determined on the basis of the most recent census data available to the Secretary of HHS and, the Secretary shall use for such purpose, if available, the annual current interim census data produced by the Secretary of Commerce pursuant to section 181 of Title 13.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of one percent of the amounts available to the States (section 304(a)(1)).

Expenditure Period

FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, *i.e.*, FY 2008 funds may be used for expenditures from October 1, 2007, through September 30, 2009. Funds will be available for obligations only through September 30, 2008, and must be liquidated by September 30, 2009.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2008 grant funds that are made available to the States through re-allotment, under section 304(d)(2), must be expended by the State no later than September 30, 2009.

III. Eligibility

"States" as defined in section 320 of FVPSA are eligible to apply for funds.

The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. In the past, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa have applied for funds as a part of their consolidated grant under the Social Services Block Grant. These jurisdictions need not submit an application under this program announcement if they choose to have their allotment included as part of a consolidated grant application.

Additional Information on Eligibility

D-U-N-S Requirement

All applicants must have a D&B Data Universal Numbering System (D-U-N-S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D-U-N-S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D-U-N-S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, www.Grants.gov. A D-U-N-S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that the applicant's organization has a D-U-N-S number. To acquire a D-U-N-S number at no cost call the dedicated toll-free D-U-N-S number request line at 1-866-705-5711 or request a number online at <http://www.dnb.com>.

IV. Application Requirements

The Paperwork Reduction Act of 1995 (PUB.L. 104-13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under Office of Management and Budget (OMB) control number 0970-0280, which expires October 31, 2008. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form and Content of Application Submission

The State's application must be submitted by the Chief Executive of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of FVPSA.

Each application must contain the following information or documentation:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under FVPSA and coordination of related programs within the State, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met. "Underserved populations" include populations underserved because of geographic location (such as rural isolation), underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, immigration status, or age), and any other population determined to be underserved by the State planning process in consultation with the Attorney General (section 303(a)(2)(C)).

(a) Identify the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, *e.g.*, new shelters; services for the battered, elderly, women of color, etc.

(c) Describe the public information component of the State's outreach program; the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help; tools to identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions, knowledgeable individuals, and interested organizations, and assure an equitable distribution of grants and grant funds within the State, including an equitable distribution between urban and rural areas, as required by sections 303(a)(2)(C) and 311(a)(5).

(4) Provide a complete description of the process and procedures to be implemented that allow for the participation of the State domestic violence coalition in planning and

monitoring the distribution of grant funds and determining whether a grantee is in compliance with section 303(a)(2) as required by sections 303(a)(3) and 311(a)(5).

(5) Provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure confidentiality of records pertaining to any individual who has been provided family violence prevention or treatment services by any program assisted under FVPSA (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds; a description of the target population; the number of shelters to be funded; the services the State will provide; and the expected results from the use of the grant funds (section 303(a)(2)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303 (a)(2)(F)).

Assurances

Each application must provide the following assurances that:

(1) Grant funds under FVPSA will be distributed to local public agencies and non-profit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(2) Not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance, as defined in section 320(5)(A), to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(3) Not more than five percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(4) In distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit, private organizations, particularly for those projects where the primary purpose is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(5) Grants funded by the States will meet the matching requirements in

section 303(f), i.e., not less than 20 percent of the total funds provided for a project under Chapter 110 of Title 42 of the U.S.C. with respect to an existing program, and with respect to an entity intending to operate a new program under this Title, not less than 35 percent. The local share will be cash or in-kind; and the local share will not include any Federal funds provided under any authority other than this chapter (section 303(f)).

(6) Grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(7) No income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out FVPSA (section 303(e)).

(8) The address or location of any shelter-facility assisted under FVPSA will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(9) All grants, programs or other activities funded by the State in whole or in part with funds made available under FVPSA will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(10) Funds made available under FVPSA will be used to supplement and not supplant other Federal, State and local public funds expended to provide services and activities that promote the purposes of FVPSA (section 303(a)(4)).

Certifications

All applications must submit or comply with the required certifications found in the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form (See Appendix A): Applicants must furnish prior to award an executed copy of the Standard Form (SF) LLL, *Certification Regarding Lobbying*, when applying for an award in excess of \$100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348-0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See Appendix B): The Pro-Children Act of 1994, 20 U.S.C. 7183, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are

subject to these requirements only if they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with Federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

Certification Regarding Drug-Free Workplace Requirements (See Appendix C): The signature on the application by the chief program official attests to the applicant's intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application. These certifications also may be found at http://www.acf.hhs.gov/grants/grants_resources.html.

Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," for State plan consolidation and implication only—45 Code of Federal Regulations (CFR) 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

Applications should be sent to:

Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Marylouise Kelley, 1250 Maryland Avenue, SW., Room 8215, Washington, DC 20024.

V. Approval/Disapproval of a State Application

The Secretary of HHS will approve any application that meets the requirements of FVPSA and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for the applicant to correct any deficiencies. The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

VI. Reporting Requirements

Performance Reports

Section 303(a)(4) requires that States file a performance report with HHS describing the activities carried out, and inclusion of an assessment of the effectiveness of those activities in achieving the purposes of the grant. Section 303(a)(5) requires that the State file a report that contains a description of the activities carried out with funds expended for State administrative costs. A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the State's application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements and narrative examples of the services that were provided:

Funding—The total amount of the FVPSA grant funds awarded. The percentage of FVPSA funds as to total funding. The percentage of FVPSA funding used for shelters, and the percentage of funding used for related services and assistance.

Shelters—The total number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of women sheltered.
- The number of shelters in the State.
- The number of safe houses and shelter alternatives in the State.
- The number of non-shelter programs in the State.
- The number of young children sheltered (birth–12 years of age).
- The number of teenagers and young adults sheltered (13–18 years of age).
- The number of men sheltered.
- The number of elderly sheltered (55+ years of age).
- The number of elderly provided non-shelter services.
- The average length of shelter stay.

- The number of women, children, teens, and others that were turned away because shelter was unavailable.

- The number of women, children, teens, and others that were referred to other shelters due to a lack of space.

Types of individuals served (including special populations)—Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

- Racial identification;
- Language (other than English);
- Geographically isolated from shelter (urban or rural);
- Persons with disabilities; and
- Other special needs populations.

Related services and assistance—List the types of related services and assistance provided to victims and their family members by indicating the number of women, children and men that have received services. Services and assistance may include, but are not limited to, the following:

- Individual counseling;
- Group counseling;
- Crisis intervention/hotline;
- Information and referral;
- Batterers support services;
- Legal advocacy services;
- Transportation;
- Services to teenagers;
- Emergency child care;
- Training and technical assistance;
- Housing advocacy; and
- Other innovative program activities.

Volunteers—List the total number of volunteers and hours worked.

Service referrals—List the number of women, children and men referred for the following services: (Note: Please indicate if the individual was identified as a batterer.)

- Alcohol abuse;
- Drug abuse;
- Batterer intervention services;
- Witnessed abuse;
- Emergency medical intervention;

and

- Law enforcement intervention.

Narratives of success stories—Provide narratives of success stories of services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the State were addressed and what special emphases were placed on these activities;
- A description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (e.g., shelters, safe-houses,

related assistance, programs for batterers);

- An assessment of the effectiveness of the direct service activities contemplated in the application;

- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity or geographic isolation were addressed;

- A description and assessment of the prevention activities supported during the program year, e.g., community education events, and public awareness efforts; and

- A discussion of exceptional issues or problems arising, but not addressed in the application.

Performance Reports for the States are due on an annual basis at the end of the calendar year (December 29). Performance Reports should be sent to:

Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Marylouise Kelley, 1250 Maryland Avenue, SW., Room 8215, Washington, DC 200247.

Please note that section 303(a)(4) of FVPSA requires HHS to suspend funding for an approved application if any State applicant fails to submit an annual Performance Report or if the funds are expended for purposes other than those set forth under this announcement.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF-269A is due December 29, 2008. The final SF-269A is due December 29, 2009. SF-269A can be found at http://www.whitehouse.gov/omb/grants/grants_forms.html.

Completed reports may be mailed to:

Manolo Salgueiro, Division of Mandatory Grants, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees have the option of submitting their reports online through the Online Data Collection (OLDC) system at the following address: <https://extranet.acf.hhs.gov/ssi>. Failure to submit reports on time may be a basis for withholding grant funds, suspension or termination of the grant. All funds reported as unobligated after the obligation period will be recouped.

VII. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at <http://www.hhs.gov/fbci/waigate21.pdf>.

A faith-based organization receiving HHS funds retains its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities.

Faith-based and community organizations may reference the "Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government" at <http://www.whitehouse.gov/government/fbci/guidance/index.html>.

VIII. Other Information

For Further Information Contact: Edna James at (202) 205-7750 or e-mail at Edna.James@acf.hhs.gov, or Marylouise Kelley at (202) 401-5756 or e-mail at Marylouise.Kelley@acf.hhs.gov.

Dated: December 20, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendices—Required Certifications:

- A. Anti-Lobbying and Disclosure
- B. Environmental Tobacco Smoke
- C. Drug-Free Workplace Requirements

Appendix A

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States

to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Appendix B

Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and

consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or

rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. E7-25338 Filed 12-28-07; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants for Battered Women's Shelters/Grants to Native American Tribes (Including Alaska Native Villages) and Tribal Organizations

Program Office: Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS-2008-ACF-ACYF-FVPS-0124.

Announcement Title: Family Violence Prevention and Services/Grants for Battered Women's Shelters/Grants to Native American Tribes (including Alaska Native Villages) and Tribal Organizations.

CFDA Number: 93.671.

Due Date for Applications: January 30, 2008.

Executive Summary: This announcement governs the proposed award of formula grants under the Family Violence Prevention and

Services Act (FVPSA) to Native American Tribes (including Alaska Native Villages) and Tribal organizations. The purpose of these grants is to assist Tribes in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2008. Grantees are to be mindful that although the expenditure period for grants is a two-year period, an application is required every year to provide continuity in the provision of services. (See Section II. Award Information, Expenditure Periods.)

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Public Law 98-457, 42 U.S.C. 10401 *et seq.*) is entitled the "Family Violence Prevention and Services Act" (FVPSA). FVPSA was first implemented in FY 1986. The statute was subsequently amended by Public Law 100-294, the "Child Abuse Prevention, Adoptions, and Family Services Act of 1988;" further amended in 1992 by Public Law 102-295, the "Child Abuse, Domestic Violence, Adoption, and Family Services Act;" and then amended in 1994 by Public Law 103-322, the "Violent Crime Control and Law Enforcement Act." FVPSA was amended again in 1996 by Public Law 104-235, the "Child Abuse Prevention and Treatment Act (CAPTA);" in 2000 by Public Law 106-386, the "Victims of Trafficking and Violence Protection Act," and amended further by Public Law 108-36, the "Keeping Children and Families Safe Act of 2003." FVPSA was most recently amended by Public Law 109-162, the "Violence Against Women and Department of Justice Reauthorization Act of 2005" as amended by Public Law 109-271, which was enacted on August 17, 2006. FVPSA can be found at 42 U.S.C. 10401 *et seq.*

Background

The purpose of this legislation is to assist States and Tribes or Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2007, the Department of Health and Human Services (HHS)

made 237 grants to States and Tribes or Tribal organizations. HHS also made 53 family violence prevention grant awards to non-profit State domestic violence coalitions.

In addition, HHS supports the Domestic Violence Resource Center Network (DVRN). DVRN consists of the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The four SIRCs are: the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, the Resource Center for the Elimination of Domestic Violence Against Native Women (Sacred Circle), and the Health Resource Center on Domestic Violence. The purposes of NRC and the SIRCs are to provide resource information, training, and technical assistance to Federal, State, and Native American agencies; local domestic violence prevention programs; and other professionals who provide services to victims of domestic violence.

In February 1996, HHS funded the National Domestic Violence Hotline (Hotline) to ensure that everyone has access to information and emergency assistance wherever and whenever it is needed. The Hotline is a 24-hour, toll-free service that provides crisis assistance, counseling, and local shelter referrals for people across the country in need of assistance. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1-800-799-SAFE (7233); the TTY number for the hearing impaired is 1-800-787-3224.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of adult victims of domestic violence and their children. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (section 303(a)(2)(E)).

The confidentiality provisions described at 42 U.S.C., section 13701, apply to programs funded under the Violence Against Women Act, as amended, including certain awards made under the Family Violence Prevention and Services Act. These confidentiality requirements were strengthened and clarified with the passage of the Violence Against Women Reauthorization Act of 2005, Public Law 109-162, as recently amended by Public Law 109-271. The revised confidentiality provisions impose

conditions regarding the disclosure of personally identifying information, confidentiality, information sharing, and compulsory release of information.

National Data Collection and Outcomes Measurement

The need to accurately communicate reliable and appropriate data that captures the impact of domestic violence prevention and intervention efforts and to provide shelters, States, Tribes and State Domestic Violence Coalitions with tools for self-assessment continues through FVPSA Program participation in the Documenting our Work (DOW) Initiative of the National Resource Center on Domestic Violence. In collaboration with our partners at the State FVPSA programs, State Domestic Violence Coalitions, Tribes and Tribal organizations, and experts on both data collection and domestic violence prevention issues, the effort to develop informative, succinct, and non-burdensome reporting formats continues. During FY 2007, in concert with State FVPSA administrators, State Domestic Violence Coalitions and local service providers, the FVPSA Program revised and defined the program services reporting components for recipients of FVPSA State Formula Grant funds.

In FY 2008, the FVPSA Program will work with Tribal representatives to assess the applicability of the proposed program reporting procedures and outcome measures for FVPSA Tribal grantees. Tribal representatives will be convened to examine current services and outcome reporting requirements and make recommendations to improve FVPSA Tribal grant performance reporting. Any recommended changes to reporting formats will be communicated through specifically designated workshops, adjunctive discussions at regularly occurring meetings, or through dissemination of program guidance.

General Grant Program Requirements for Tribes or Tribal Organizations

Definitions Tribes and Tribal organizations should use the following definitions in carrying out their programs. The definitions are found in section 320 of FVPSA.

Family Violence: Any act, or threatened act, of violence, including any forceful detention of an individual, which: (a) results or threatens to result in physical injury, and (b) is committed by a person against another individual (including an elderly person) to whom such person is, or was, related by blood or marriage, or otherwise legally related,

or with whom such person is, or was, lawfully residing.

Indian Tribe and Tribal organization: Have the same meanings given such terms in subsections (b) and (c), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

Related Assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach for victims and their children, assistance to children who witness domestic violence, employment training, parenting, and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(c) Transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

The Importance of Coordination of Services

The impacts of domestic violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences. The physical and cultural obstacles existing in much of Indian country compound the basic dynamics of domestic violence. Barriers such as the isolation of vast rural areas, the concern for safety in isolated settings, and the transportation requirements over long distances heighten the need for the coordination of the services through an often limited delivery system. It is estimated that between 12 percent and 35 percent of injured women visiting emergency rooms are there because of battery. In a project intended to broaden the reach of the Native American domestic violence community, the Indian Health Service (IHS) and FVPSA have collaborated to oversee the development of domestic violence community projects. These projects are designed to develop improved health care responses to domestic violence and to facilitate collaboration between the local health care system and local American Indian and Alaskan Native domestic violence advocacy programs. In this effort, IHS also is collaborating with representatives of Mending the Sacred Hoop, Cangleska, Inc., and the Family Violence Prevention Fund to provide training, technical assistance, and oversight to the pilot projects.

To help bring about a more effective response to the problem of domestic violence, HHS urges Tribes and Tribal organizations receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of domestic violence.

Annual Tribal Grantee Conference

FVPSA grant administrators should plan to attend the annual Tribal Grantee Conference. Subsequent correspondence will advise the Tribal FVPSA Administrators of the date, time, and location of the grantee conference.

II. Funds Available

For FY 2008, HHS will make available for grants to designated State agencies 70 percent of the amount appropriated under section 310(a)(1) of the FVPSA, which is not reserved under section

310(a)(2). In this separate announcement, HHS will allocate 10 percent of the foregoing appropriation to Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services. HHS also plans to make 10 percent of the foregoing appropriation available to State domestic violence coalitions to continue their work within the domestic violence community by providing technical assistance and training and advocacy services, among other activities, with local domestic violence programs to encourage appropriate responses to domestic violence within the States.

Five percent of the amount appropriated under section 310(a)(1) of the FVPSA, which is not reserved under section 310(a)(2), will be available in FY 2008 to continue the support for the NRC and the four SIRC's. Additional funds appropriated under FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects, as well as the ongoing operation of the Hotline.

Native American Tribal Allocations

Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of "Indian Tribe" or "Tribal organization" at 25 U.S.C. 450b, and if they are able to demonstrate their capacity to carry out family violence prevention and services programs. Any Tribe that believes it meets the eligibility criteria should provide supportive documentation in its application and a request for inclusion on the list of eligible Tribes. (See *Section IV. Application Requirements for Tribes or Tribal Organizations.*)

In computing Tribal allocations, we will use the latest available population figures from the Census Bureau. Where Census Bureau data are unavailable, we will use figures from the Bureau of Indian Affairs' (BIA's) Indian Population and Labor Force Report.

Because section 304 of FVPSA specifies a minimum base amount for State allocations, we have set a base amount for Tribal allocations. Since FY 1986, we have found, in practice, that the establishment of a base amount has facilitated our efforts to make a fair and equitable distribution of limited grant funds. The funding formula for the allocation of family violence funds is as follows. Tribes that meet the application requirements and whose reservation and

surrounding Tribal Trust Lands' population is:

- less than or equal to 1,500 will receive a minimum base amount of \$1,500;
- between 1,501 and 3,000 will receive a minimum base amount of \$3,000;
- between 3,001 and 4,000 will receive a minimum base amount of \$4,000; and,
- between 4,001 and 5,000 will receive a minimum base amount of \$5,000.

The minimum base amounts are computed in relation to the Tribe's population and the progression of an additional \$1,000 per 1,000 persons if the population range continues until the Tribe's population reaches 50,000. Tribes with a population of 50,000 to 100,000 will receive a minimum of \$50,000 and Tribes with a population of 100,001 to 150,000 will receive a minimum of \$100,000.

Once the base amounts have been distributed to the Tribes that have applied for FVPSA funding, the ratio of the Tribe's population to the total population of all the applicant Tribes is then considered in allocating the remainder of the funds. We have accounted for the variance in actual population and scope of the FVPSA programs with the distribution of a proportional amount plus a base amount to the Tribes. In FY 2007, actual grant awards ranged from \$26,709 to \$2,337,036. Tribes are encouraged to apply for FVPSA funding as a consortium. Tribal consortia consist of groups of Tribes who agree to apply for and administer a single FVPSA grant with one Tribe or Tribal organization responsible for grant administration. In a Tribal consortium, the population of the Tribal Trust Land for all of the Tribes involved will be used to calculate the award amount.

Expenditure Periods

The FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2008 funds may be used for expenditures from October 1, 2007 through September 30, 2009. Funds are available for obligation only through September 30, 2008, and must be liquidated by September 30, 2009.

Reallotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for reallotment. FY 2008 grant funds that are made available to Tribes and Tribal

organizations through reallotment must be expended by the grantee no later than September 30, 2009.

III. Eligibility

Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of "Indian Tribe" or "Tribal organization" set forth in section 450B of Title 25 and if they are able to demonstrate their capacity to carry out a family violence prevention and services program. Any Tribe or Tribal organization that believes it meets the eligibility criteria and should be included in the list of eligible Tribes should provide supportive documentation and a request for inclusion in its application. (See Application Content Requirements below.) Tribes may apply singularly or as a consortium. In addition, through the resolution submitted by a Tribe, a non-profit private organization (including faith-based and community organizations) may operate the grant project on behalf of the Tribe.

Additional Information on Eligibility

D-U-N-S Requirement

All applicants must have a D&B Data Universal Numbering System (D-U-N-S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D-U-N-S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D-U-N-S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, <http://www.Grants.gov>. A D-U-N-S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that the applicant has a D-U-N-S number. To acquire a D-U-N-S number at no cost, call the dedicated toll-free D-U-N-S number request line at 1-866-705-5711 or you may request a number on-line at <http://www.dnb.com>.

IV. Application Requirements for Tribes and Tribal Organizations

The Paperwork Reduction Act of 1995 (Pub. L. 104-13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining

the data needed, and reviewing the collection information. The project description is approved under Office of Management and Budget (OMB) control number 0970-0280, which expires October 31, 2008. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form and Content of Application Submission

The application from the Tribe or Tribal organization must be signed by the Chief Executive Officer or Tribal Chairperson of the applicant organization. Each application must contain the following information or documentation:

1. The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under FVPSA and coordinating related programs, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

2. A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the individuals in the Tribe(s) and to administer programs and activities funded under this program (section 303(b)(2)).

3. A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under FVPSA (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of State coalitions against domestic violence, faith-based and community organizations, and operators of family violence shelters and service programs.

4. A description of the applicant's operation of and/or capacity to carry out a family violence prevention and services program. This might be demonstrated in ways such as the following:

- (a) The current operation of a shelter, safe house, or family violence prevention program;

- (b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of family violence prevention activities or services; or

- (c) The operation of social services programs as evidenced by receipt of "638" contracts with BIA; Title II Indian

Child Welfare grants from BIA; Child Welfare Services grants under Title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

5. A description of the services to be provided, how the applicant organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services.

6. Documentation that procedures have been developed and implemented to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under FVPSA (section 303(a)(2)(E)).

7. The Employee Identification Number (EIN) of the applicant organization submitting the application.

Assurances

Each application must contain the following assurances:

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(b) That any grants made to an entity other than a State or Tribe will meet the matching requirements in section 303(f), i.e., not less than 20 percent of the total funds provided for a project under Chapter 110 of Title 42 of the U.S. Code with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in-kind; and the local share will not include any Federal funds provided under any authority other than this chapter (section 303(f)).

(c) That grant funds made available under FVPSA will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(d) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out FVPSA (section 303(e)).

(e) That the address or location of any shelter or facility assisted under FVPSA will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(f) That a law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

(g) That all grants, programs or other activities funded by the State in whole or in part with funds made available under FVPSA will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(h) That the applicant will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 92.

Certifications

All applications must submit or comply with the required certifications found in the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form (See Appendix A): Applicants must furnish, prior to award, an executed copy of the SF–LLL, *Certification Regarding Lobbying*, when applying for an award in excess of \$100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See Appendix B): The Pro-Children Act of 1994, 20 U.S.C. 7183, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are subject to these requirements only if they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with Federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil

monetary penalty of up to \$1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

Certification Regarding Drug-Free Workplace Requirements (See Appendix C): The signature on the application by the chief program official attests to the applicant's intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application. These certifications also may be found at http://www.acf.hhs.gov/grants/grants_resources.html.

Notification Under Executive Order 12372

The review and comment provisions of the Executive Order (E.O.) and Part 100 do not apply. Federally recognized Tribes are exempt from all provisions and requirements of E.O. 12372.

Applications should be sent to:

Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Marylouise Kelley, Portals One, 1250 Maryland Avenue, SW., Room 8215, Washington, DC 20024.

V. Approval/Disapproval of a Tribal or Tribal Organization Application

The Secretary of HHS will approve any application that meets the requirements of FVPSA and this announcement. The Secretary will not disapprove an application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for applicant to correct any deficiencies. The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

VI. Reporting Requirements

Performance Reports

A performance report must be filed with HHS describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the application certifying performance of such services. Consortia grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related services and assistance.

Shelters—The number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of shelters.
- The number of women sheltered.
- The number of young children sheltered (birth–12 years of age).
- The number of teenagers and young adults (13–17 years of age).
- The number of male victims sheltered.
- The number of the elderly serviced.
- The number of shelter nights of service provided for women, men and children.
- The number of women, children, teens, and others that were turned away because shelter was unavailable.

Types of individuals served (including special populations)—Record information by total number served. Individuals and special populations served should include:

- The elderly.
- Individuals with physical challenges.
- Other special needs populations.

Related services and assistance—List the types of related services and assistance provided to victims and their family members by indicating the number of women, children, and men that have received services. Services and assistance may include, but are not limited to, the following:

- Individual counseling.
- Services to children.
- Crisis intervention/hotline.
- Information and referral.
- Batterers support services.
- Legal advocacy services.
- Transportation.
- Services to teenagers.
- Emergency child care.
- Training and technical assistance.
- Housing advocacy.
- Other innovative program activities.

Volunteers—List the total number of volunteers and hours worked. The performance report should include narratives of success stories about services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds; what particular priorities within the Tribe or Tribal organization were addressed; and what

special emphases were placed on these activities;

- A description of the specific services and facilities that the program funded, contracted with, or otherwise used in the implementation of the program, e.g., shelters, safe houses, related assistance, programs for batterers;
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including those persons geographically isolated were addressed; and
- A description and assessment of the prevention activities supported during the program year, e.g., community education events, and public awareness efforts.

Performance reports for Tribes and Tribal organizations are due on an annual basis at the end of the calendar year (December 29). Performance reports should be sent to: Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attn: Marylouise Kelley, Portals One, 1250 Maryland Avenue, SW., Room 8215, Washington, DC 20024.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2008. The final SF–269A is due December 29, 2009. SF 269A can be found at: <http://www.whitehouse.gov/omb/grants/grantsforms.html>.

Completed reports may be mailed to: Manolo Salgueiro, Division of Mandatory Grants, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees have the option to submit their reports online through the Online Data Collection (OLDC) system at the following address: <https://extranet.acf.hhs.gov/oldc/>. Failure to submit reports on time may be a basis for withholding grant funds, suspension, or termination of the grant. In addition, all funds reported after the obligation period will be recouped.

VII. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

Direct Federal grants, sub-award funds, or contracts under this ACF

program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at <http://www.hhs.gov/fbci/waisgate21.pdf>.

A faith-based organization receiving HHS funds retains its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities.

Faith-based and community organizations may reference the "Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government" at: <http://www.whitehouse.gov/government/fbci/guidance/index.html>.

VIII. Other Information

FOR FURTHER INFORMATION CONTACT:

Shena Williams at (202) 205–9532 or e-mail at shena.williams@acf.hhs.gov; or Millicent Crawford at (202) 205–7746 or e-mail at Millicent.crawford@acf.hhs.gov.

Dated: December 20, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendices: Required Certifications:

- A. Certification Regarding Lobbying
- B. Certification Regarding Environmental Tobacco Smoke
- C. Drug-Free Workplace Requirements

Appendix A**Certification Regarding Lobbying***Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Appendix B**Certification Regarding Environmental Tobacco Smoke**

Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C**Certification Regarding Drug-Free Workplace Requirements**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

*Certification Regarding Drug-Free Workplace Requirements**(Instructions for Certification)*

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office,

performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. E7-25341 Filed 12-28-07; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White HIV/AIDS Treatment Modernization Act of 2006: Program Allocation and Expenditure Forms (NEW)

The Ryan White HIV/AIDS Program Allocation and Expenditure Reports will enable the Health Resources and Services Administration's HIV/AIDS Bureau to track spending requirements for each program as outlined in the 2006 legislation. Grantees funded under Parts A, B, C, and D of the Ryan White HIV/

AIDS Program (codified under Title XXVI of the Public Health Service Act) would be required to report financial data to HRSA at the beginning and end of their grant cycle.

All parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds. Accurate allocation and expenditure records of the grantees receiving Ryan White HIV/AIDS Program funding are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

The new law changes how Ryan White HIV/AIDS Program funds can be used, with an emphasis on providing life-saving and life-extending services for people living with HIV/AIDS across this country. More money will be spent on direct health care for Ryan White

HIV/AIDS Program clients. Under the new law, unless they receive a waiver, grantees receiving funds under Parts A, B, and C must spend at least 75 percent of funds on "core medical services" and can spend no more than 5 percent or 3 million dollars (whichever is smaller) on clinical quality management. Under Parts A–D, there is also a 10 percent spending cap on grantee administration.

The forms would require grantees to report on how funds are allocated and spent on core and non-core services, and on various program components, such as administration, planning and evaluation, and quality management. The two forms are identical in the types of information they collect. However, the first report would track the allocation of their award at the

beginning of their grant cycle and the second report would track actual expenditures (including carryover dollars) at the end of their grant cycle.

The primary purposes of these forms are to: (1) provide information on the number of grant dollars spent on various services and program components, and (2) oversee compliance with the intent of congressional appropriations in a timely manner. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information collected on these reports is critical for HRSA, State, and local grantees, and individual providers to evaluate the effectiveness of these programs.

The response burden for grantees is estimated as:

Program under which grantee is funded	Number of grantee respondents	Responses per grantee	Total responses	Hours to complete each form	Total hours
Part A	56	2	112	8	896
Part B	59	2	118	12	1416
Part A MAI	56	2	112	4	448
Part B MAI	59	2	118	4	472
Part C	361	2	722	7	5054
Part D	90	2	180	7	1260
Total	681	.....	1,362	.....	9,546

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to OIRA_submission@omb.eop.gov or by fax to 202-395-6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: December 20, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7-25332 Filed 12-28-07; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information

collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA AIDS Drug Assistance Program Quarterly Report—(OMB No. 0915-0295): Revision

HRSA's AIDS Drug Assistance Program (ADAP) is funded through Part B of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (The Ryan White HIV/AIDS Program), which provides grants to States and Territories. The ADAP provides medications for the treatment of HIV disease. Program funds may also be used to purchase health insurance for eligible clients or for services that enhance access, adherence, and monitoring of drug treatments.

Each of the 50 States, the District of Columbia, Puerto Rico, and several Territories receive ADAP grants. As part of the funding requirements, ADAP grantees submit quarterly reports that include information on patients served, pharmaceuticals prescribed, pricing, and other sources of support to provide AIDS medication treatment, eligibility requirements, cost data, and coordination with Medicaid. Each quarterly report requests updates from programs on number of patients served, type of pharmaceuticals prescribed, and prices paid to provide medication. The first quarterly report of each ADAP fiscal year (due in July of each year) also requests information that only changes annually (e.g., State funding, drug formulary, eligibility criteria for enrollment, and cost-saving strategies including coordinating with Medicaid).

The quarterly report represents the best method for HRSA to determine how ADAP grants are being expended and to provide answers to requests from Congress and other organizations.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
1 st Quarterly Report	57	1	57	3	171
2 nd , 3 rd , & 4 th Quarterly Reports	57	3	171	1.5	256.5
Total	57	.....	228	.....	427.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to OIRA_submission@omb.eop.gov or by fax to 202-395-6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: December 20, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7-25336 Filed 12-28-07; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 the meeting of the National Cancer Advisory Board.

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.

A portion of 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 Cancer Advisory Board.

Open: February 5, 2008, 8:30 a.m. to 4:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Name of Committee: National Cancer Advisory Board.

Closed: February 5, 2008, 4:15 p.m. to 5:30 p.m.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Name of Committee: National Cancer Advisory Board.

Open: February 6, 2008, 8 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

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: <http://deainfo.nci.nih.gov/advisory/ncab.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6245 Filed 12-28-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of 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 meetings of the National Advisory Council for Human Genome Research.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 11-12, 2008.

Open: February 11, 2008, 8:30 a.m. to 1 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 11, 2008, 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 12, 2008, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301-496-7531, guyerm@mail.nih.gov.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 19–20, 2008.

Open: May 19, 2008, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 19, 2008, 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 20, 2008, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301-496-7531, guyerm@mail.nih.gov.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 8–9, 2008.

Open: September 8, 2008, 8:30 a.m. to 1 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: September 8, 2008, 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: September 9, 2008, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301-496-7531, guyerm@mail.nih.gov.

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.

Information is also available on the Institute's/Center's home page: <http://www.genome.gov/115098849>, where an agenda and any additional information for the meeting will be posted when available. (Catalog of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 20, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6244 Filed 12-28-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2007-0156]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). TSAC advises the Coast Guard on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Application forms should reach the Coast Guard on or before February 15, 2008.

ADDRESSES: Application forms are available for download on the Advisory Committee's Web site at <http://homeport.uscg.mil/tsac>; look for "ACM" (Application for Committee Membership) under "General Information." You may also request that an application form be e-mailed or sent to you by writing to Commandant (CG-5221/TSAC); U.S. Coast Guard, Room 1210; 2100 Second Street SW.; Washington, DC 20593-0001; by calling 202-372-1401; or by e-mail to Gerald.P.Miante@uscg.mil. Send your original completed and signed application in written form to the above street address. Be sure to sign and include the short page that allows us to keep political affiliation on file. In addition to your "HOME ADDRESS," please include your e-mail address in that block. Also, in addition to your phone number, please indicate your fax number in the "TELEPHONE" block. This notice is available on the Internet at <http://www.Regulations.gov> in docket USCG-2007-0156.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miente; Assistant Executive Director of TSAC, telephone 202-372-1407, fax 202-372-1926, or e-mail Gerald.P.Miante@uscg.mil.

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee mandated by Congress and operates under 5 U.S.C. App. (Pub. L. 92-463). It advises the Secretary of Homeland

Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its Subcommittees and working groups may meet to consider specific issues as required. The 16-person membership includes 7 representatives of the Barge and Towing Industry (reflecting a regional geographical balance); 1 member from the Offshore Mineral and Oil Supply Vessel Industry; and 2 members from each of the following areas: Maritime Labor; Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); Port Districts, Authorities, or Terminal Operators; and the General Public.

The Coast Guard is currently considering applications for two positions from the Barge and Towing Industry, one position from Port Districts, Authorities, or Terminal Operators; one position from Maritime Labor; and one position from the General Public. To be eligible, applicants should have particular expertise, knowledge, and experience relative to the position in towing operations, marine transportation, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. Each member serves for a three-year term. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

Members of TSAC selected from the General Public will be appointed and serve as Special Government Employees (SGE) as defined in section 202(a) of title 18, United States Code (18 U.S.C.). As a candidate for appointment as an SGE, applicants are required to complete a Confidential Financial Disclosure Report (CFDR) on Office of Government Ethics Form 450 (OGE Form 450). OGE Form 450s are not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official (DAEO) or his designate may release a Confidential Financial Disclosure Report.

When filling in the "Name of Committee you are interested in" block,

please indicate "TSAC" followed by the position category (e.g., Barge and Towing, Maritime Labor, Port Districts, Authorities, or Terminal Operators, or Public) for which you are applying.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages qualified women and members of minority groups to apply.

Dated: December 19, 2007.

J.G. Lantz,

Director, Commercial Regulations and Standards.

[FR Doc. E7-25309 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5030-FA-31]

Notice of Funding Awards; Resident Opportunities and Self-Sufficiency Family and Homeownership Program for Fiscal Year 2006

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2006 Notice of Funding

Availability (NOFA) for the Resident Opportunities and Self-Sufficiency Family and Homeownership Program funding for Fiscal Year 2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY 2006 ROSS Family and Homeownership awards, contact the Office of Public and Indian Housing's Grants Management Center, Director, Iredia Hutchinson, Department of Housing and Urban Development, Washington, DC, telephone (202) 402-0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at (800) 877-8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the \$18,000,000 in four-year budget authority for ROSS Family and Homeownership program coordinators is found in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, FY2006 (Pub. L. 109-115). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213 (d) of the Housing and Community Development Act of 1974,

as amended. Additionally, unobligated funds were added to the \$18,000,000.

This program is intended to promote the development of local strategies to coordinate the use of assistance under the ROSS program with public and private resources to enable participating families to achieve economic independence and self-sufficiency. A Public and Indian Housing Program Coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

The Fiscal Year 2006 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** NOFA published on March 8, 2006 (71 FR 3382). Applications were scored based on the selection criteria in that Notice and funding selections made based on the rating and ranking of applications within each state.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 105 awards made under the ROSS Family and Homeownership Program competition.

Dated: December 10, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE ROSS FAMILY HOMEOWNERSHIP PROGRAM

Recipient	Address	City	State	Zip code	Amount
Mobile Housing Board	151 South Claiborne Street	Mobile	AL	36602	\$500,000
Prichard Housing Authority	4559 St. Stephens Road	Eight Mile	AL	36613	250,000
Tuscaloosa Housing Authority	2808 10th Avenue	Tuscaloosa	AL	35403	350,000
Housing Authority of Lonokey County.	P.O. Box 74, 617 North Greenlaw Street.	Carlisle	AR	72024	249,990
City of Phoenix Housing Department.	251 West Washington, 4th Floor	Phoenix	AZ	85003	350,000
Big Pine Paiute Tribe	825 South Main Street	Big Pine	CA	93513	146,868
Housing Authority of the City of Oxnard.	435 South D Street	Oxnard	CA	93030	250,000
Housing Authority of the County of Kern.	601-24th Street	Bakersfield	CA	93301	150,000
Housing Authority of the County of Riverside.	5555 Arlington Avenue	Riverside	CA	92504	150,000
Housing Authority of the County of San Bernardino.	715 East Brier Drive	San Bernardino	CA	92408-2841	350,000
San Diego Housing Commission	1625 Newton Avenue	San Diego	CA	92113	350,000
Housing Authority of the City & County of Denver.	777 Grant Street	Denver	CO	80203	500,000
Housing Authority of the City of Bridgeport.	150 Highland Avenue	Bridgeport	CT	06604	350,000
Housing Authority of the City of Hartford.	180 Overlook Terrace	Hartford	CT	06106	249,000
Meriden Housing Authority	22 Church Street	Meriden	CT	06451	250,000
The Housing Authority of the City of Norwalk.	24½ Monroe Street	Norwalk	CT	06856-0508	250,000
Wilmington Housing Authority	400 Walnut Street	Wilmington	DE	19801	349,463

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE ROSS FAMILY HOMEOWNERSHIP PROGRAM—Continued

Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of Fort Myers.	4224 Michigan	Fort Myers	FL	33916	250,000
Housing Authority of the City of Orlando, Florida.	24 Fanfair Avenue	Orlando	FL	32811	345,081
Housing Authority of the City of Sarasota.	1300 Boulevard of the Arts	Sarasota	FL	34236	150,000
Jacksonville Housing Authority ...	1300 Broad Street	Jacksonville	FL	32202	350,000
Carrollton Housing Authority	1 Roop Street	Carrollton	GA	30117	250,000
Housing Authority of Columbus, Georgia.	P.O. Box 630, 1000 Wynnton Road.	Columbus	GA	31902-0630	350,000
Coeur D'alene Tribal Housing Authority.	1005 8th Street	Plummer	ID	83851	250,000
Decatur Housing Authority	1808 East Locust Street	Decatur	IL	62521	250,000
Rockford Housing Authority	223 South Winnebago Street	Rockford	IL	61102	350,000
The Housing Authority of the City of Bloomington.	104 East Wood Street	Bloomington	IL	61701	250,000
Housing Authority of the City of Fort Wayne, Indiana.	P.O. Box 13489, 2013 South Anthony Boulevard.	Fort Wayne	IN	46803	126,821
Indianapolis Housing Agency	1919 North Meridian Street	Indianapolis	IN	46202-1303	350,000
Lawrence-Douglas County Housing Authority.	1600 Haskell Avenue	Lawrence	KS	66044	250,000
Salina Housing Authority	469 South 5th Street	Salina	KS	67401	72,081
Housing Authority of Martin	110 Raymond Griffith Drive, #1101.	Martin	KY	41649	150,000
Housing Authority of Owensboro	2161 East 19th Street	Owensboro	KY	42303	150,000
Housing Authority of Somerset ...	P.O. Box 449	Somerset	KY	42502-0449	150,000
Louisville Metro Housing Authority.	420 South Eighth Street	Louisville	KY	40203	500,000
Cambridge Housing Authority	675 Massachusetts Avenue	Cambridge	MA	1776	350,000
Commonwealth Tenants Association.	35 Fidelis Way	Brighton	MA	2135	98,925
Lynn Housing Authority & Neighborhood Development.	10 Church Street	Lynn	MA	1902	250,000
Springfield Housing Authority	25 Saab Court	Springfield	MA	1104	150,000
Housing Authority of Baltimore City.	417 East Fayette Street	Baltimore	MD	21202	814,191
Housing Opportunities Commission of Montgomery County.	10400 Detrick Avenue	Kensington	MD	20895	350,000
Keweenaw Bay Ojibwa Housing Authority.	HC 1, Box 486E	L'Anse	MI	49946	149,953
Pontiac Housing Commission	132 Franklin Boulevard	Pontiac	MI	48341	150,000
Housing Authority of Kansas City, Missouri.	301 East Armour	Kansas City	MO	64110	349,990
Housing Authority of St. Louis County.	8865 Natural Bridge Road	St. Louis	MO	63121	150,000
Housing Authority of the City of Independence, MO.	210 South Pleasant	Independence	MO	64050	249,652
St. Louis Housing Authority	4100 Lindell Boulevard	St. Louis	MO	63108	350,000
Charlotte Housing Authority	1301 South Boulevard	Charlotte	NC	28203	500,000
Greensboro Housing Authority ...	P.O. Box 21287, 450 North Church Street.	Greensboro	NC	27420	350,000
Housing Authority of the City of Asheville, NC.	P.O. Box 1898, 165 South French Broad Avenue.	Asheville	NC	28801	350,000
Housing Authority of the City of High Point.	500 East Russell Avenue	High Point	NC	27261	350,000
Housing Authority of the City of Omaha.	540 South 27th Street	Omaha	NE	68105	246,177
Atlantic City Housing Authority ...	P.O. Box 1258, 227 North Vermont Avenue, 17th Floor.	Atlantic City	NJ	08401	250,000
Housing Authority of the City of Camden.	1300 Admiral Wilson Boulevard	Camden	NJ	08102	293,780
Housing Authority of the Township of Woodbridge.	20 Bunns Lane	Woodbridge	NJ	07095	250,000
Housing Authority of the City of Las Vegas.	340 North 11th Street	Las Vegas	NV	89101	350,000
Binghamton Housing Authority ...	35 Exchange Street	Binghamton	NY	13902	250,000
Municipal Housing Authority of the City of Schenectady.	375 Broadway	Schenectady	NY	12305	249,999
New York Agency for Community Affairs.	2-4 Nevins Street, 2nd Floor	Brooklyn	NY	11217	249,894
New York City Housing Authority	250 Broadway	New York	NY	10007	986,646
Rochester Housing Authority	675 West Main Street	Rochester	NY	14611	350,000

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE ROSS FAMILY HOMEOWNERSHIP PROGRAM—Continued

Recipient	Address	City	State	Zip code	Amount
Syracuse Housing Authority	516 Burt Street	Syracuse	NY	13202	349,863
White Plains Housing Authority ..	223 Dr. Martin Luther King, Jr. Boulevard. 2832 State Route 59	White Plains	NY	10601	250,000
Portage Metropolitan Housing Authority.	2832 State Route 59	Ravenna	OH	44266	250,000
Warren Metropolitan Housing Authority.	990 East Ridge Drive	Lebanon	OH	45036	129,720
Youngstown Metropolitan Hous- ing Authority.	131 West Boardman Street	Youngstown	OH	44503	250,000
Housing Authority of the City of Muskogee.	220 North 40th Street	Muskogee	OK	74401	150,000
Housing Authority of the City of Shawnee, OK.	P.O. Box 3427, 601 West 7th Street.	Shawnee	OK	74802-3427	214,837
Housing Authority of the City of Tulsa.	P.O. Box 6369, 415 East Inde- pendence Street.	Tulsa	OK	74148-0369	348,607
Housing Authority of Clackamas County.	13930 South Gain Street	Oregon City	OR	97045	250,000
Allegheny County Housing Au- thority.	625 Stanwix Street, 12th Floor ..	Pittsburgh	PA	15222	350,000
Housing Authority of the City of Columbia, SC.	1917 Harden Street	Columbia	SC	29229	250,000
Housing Authority of the City of Spartanburg.	P.O. Box 2828	Spartanburg	SC	29304	268,154
North Charleston Housing Au- thority.	2170 Ashley Phosphate Road, Suite 700.	North Charleston	SC	29406	250,000
Oglala Sioux Tribe Partnership for Housing.	P.O. Box 3001 (Old Amulance Building).	Pine Ridge	SD	57770	125,000
Kingsport Housing & Redevlop- ment Authority.	P.O. Box 44	Kingsport	TN	37662	249,041
Memphis Housing Authority	700 Adams Avenue	Memphis	TN	38105	350,000
ACORN Institute	5353 Maple, Suite 200	Dallas	TX	75235-8411	179,916
ACORN Institute	5353 Maple, #200	Dallas	TX	75235	124,915
ACORN Institute	5353 Maple, #200	Dallas	TX	75235-8411	124,693
City of San Marcos Housing Au- thority.	1201 Thorpe Lane	San Marcos	TX	78666	250,000
Housing Authority of the City of Austin.	1124 South IH-35	Austin	TX	78704	348,122
Housing Authority of the City of Beaumont.	1890 Laurel	Beaumont	TX	77701	250,000
Housing Authority of the City of El Paso.	5300 Paisano Drive	El Paso	TX	79905	500,000
The Housing Authority of Gal- veston, Texas.	4700 Broadway	Galveston	TX	77550	250,000
The Housing Authority of the City of Dallas, Texas (DHA).	3939 North Hampton Road	Dallas	TX	75212	500,000
Housing Authority of Salt Lake City.	1776 South West Temple	Salt Lake City	UT	84115	250,000
Chesapeake Redevelopment and Housing Authority.	1468 South Military Highway	Chesapeake	VA	23320	149,335
Danville Redevelopment and Housing Authority.	651 Cardinal Place	Danville	VA	24541	250,000
Fairfax County Redevelopment and Housing Authority.	3700 Pender Drive, Suite 300	Fairfax	VA	22030	250,000
Franklin Redevelopment & Hous- ing Authority.	601 Campbell Avenue	Franklin	VA	23851	150,000
Norfolk Redevelopment and Housing Authority.	201 Granby Street	Norfolk	VA	23510	500,000
Pleasant View Tenant Associa- tion, Inc.	101 Pleasant View Avenue	Danville	VA	24541	125,000
Portsmouth Redevelopment & Housing Authority.	801 Water Street, 2nd Floor	Portsmouth	VA	23704	250,000
Roanoke Redevelopment and Housing Authority.	2624 Salem Turnpike	Roanoke	VA	24153	350,000
Urban League of Greater Rich- mond, Inc.	511 Grace	Richmond	VA	23220	375,000
Waynesboro Redevelopment and Housing Authority.	P.O. Box 1138, 1700 New Hope Road.	Waynesboro	VA	22980	250,000
Burlington Housing Authority	65 Main Street	Burlington	VT	5401	249,798
Hopelink	P.O. Box #3577, 16225 North- east 87th Street, Suite A-1.	Redmond	WA	98052	125,000
Housing Authority of the City of Tacoma.	902 South L Street	Tacoma	WA	98405	350,000

APPENDIX A.—FISCAL YEAR 2006 FUNDING AWARDS FOR THE ROSS FAMILY HOMEOWNERSHIP PROGRAM—Continued

Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of Vancouver.	2500 Main Street	Vancouver	WA	98660	250,000
King County Housing Authority ...	600 Andover Park West	Tukwila	WA	98188	250,000
The Housing Authority of the City of Everett.	3107 Colby Avenue	Everett	WA	98201	250,000
Ho-Chunk Housing and Community Development Agency.	1116 Monowau	Tomah	WI	54660	150,000
Housing Authority of the City of Milwaukee.	809 North Broadway	Milwaukee	WI	53202	350,000

[FR Doc. E7-25420 Filed 12-28-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment / Habitat Conservation Plan and Receipt of Application for Issuance of a Permit for Incidental Take of the Golden-Cheeked Warbler and Five Karst Invertebrates During the Construction and Operation of a Residential, Commercial, and/or Retail Development on Portions of the Approximately 70-acre GDF Property in Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: GDF Realty Investments, Ltd., and Purcell Investments, L.P., (Applicants) have applied for an incidental take permit (TE-171255) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) for the golden-cheeked warbler (*Dendroica chrysoparia*) and five karst invertebrates: Tooth Cave spider (*Neoleptoneta myopica*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), and Tooth Cave ground beetle (*Rhadine persephone*). The proposed take would occur as the result of construction and operation of a residential, commercial, and/or retail development with associated streets and utilities on portions of the approximately 70-acre GDF property in Austin, Travis County, Texas.

DATES: To ensure consideration, written comments must be received on or before February 29, 2008.

ADDRESSES: Persons wishing to review the Environmental Assessment and Habitat Conservation Plan (EA/HCP) may obtain a copy by written or telephone request to Cyndee Watson, U.S. Fish and Wildlife Service (Service),

10711 Burnet Road, Suite 200, Austin, Texas 78758, (512/490-0057 ext. 223), or on the Web at <http://www.fws.gov/southwest/es/austintexas/>. Documents will be available for public inspection by written request, or by appointment only during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas. Comments concerning the issuance of this permit should be submitted in writing to the Field Supervisor, Adam Zerrenner, at the above address. Please refer to permit number TE-171255-0 when submitting comments.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner at the U.S. Fish and Wildlife Service Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512/490-0057 ext. 248), or Adam_Zerrenner@fws.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act of 1973, as amended (Act) prohibits the “taking” of endangered species. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22. This notice is provided pursuant to section 10(c) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

The Service has prepared the EA/HCP for the incidental take application. A determination of jeopardy or non-

jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: GDF Realty Investments, Ltd. (Mr. R. James George) and Purcell Investments, L.P. (Dr. Fred Purcell) own approximately 70 acres, a portion of which is proposed for residential, commercial and/or retail development. These 70 acres are divided into two separate tracts and are located near the northwest corner of Ranch Road 620 and Ranch Road 2222, on the northwest side of Austin, Travis County. Six federally-listed endangered species have been documented as occurring on portions of the 70-acre property. These species are identified above.

Under the Proposed Alternative, the Service has included an option that includes on-site and off-site mitigation for impacts to the golden-cheeked warbler and karst invertebrates.

The Proposed Alternative includes the issuance of a permit under section 10(a)(1)(B) of the Act to authorize incidental take of the species listed above during the construction and operation of a residential, commercial, and/or retail development with attendant roads and utilities on portions of the 70-acre property. The proposed action on the 70-acre property includes a development area of approximately 40.2 acres, an on-site preserve (mitigation) of approximately 7 acres, and sale of approximately 22.7 acres to Travis County or other similar entity to be protected and managed as part of the Balcones Canyonlands Preserve (BCP).

Under the Proposed Alternative, the Applicants will provide (fee simple or conservation easement) the on-site mitigation land. It will be combined with a separate on-site 22.7-acre acquisition and will be preserved and managed as part of the BCP in perpetuity. The proposed preserve (on-site mitigation land and 22.7-acre

acquisition) was designed to include most of the on-site area known to be occupied by the golden-cheeked warbler. With respect to the five federally-listed karst invertebrates, the preserve was designed and configured to incorporate the remaining suite of biotic and abiotic factors needed to promote the integrity of fully-functioning karst ecosystems on which the endangered invertebrates depend.

The Habitat Conservation Plan (HCP) as part of the Proposed Alternative would substantially avoid impacts to the golden-cheeked warbler and five federally-listed karst invertebrates listed above. Impacts that cannot be avoided would be minimized and mitigated to the maximum extent practicable. The draft EA/HCP describes the impacts that would likely result to the affected species (the take); what steps the Applicants would take to avoid, minimize, and mitigate such impacts; the funding that would be made available to implement those steps; the alternative actions; and the options available within them.

Two other alternatives included in the EA/HCP are the "no action" alternative and the "past development alternatives considered." The "no action" alternative assumes that the proposed development does not occur, and that no application for an incidental take permit is processed. The "past development alternatives considered" pertain to larger and smaller development areas that were discussed.

In accordance with the Act, and 50 CFR 17.22, in December 1997 the Applicants applied for seven section 10(a)(1)(B) incidental take permits (PRT-838754, PRT-841088, PRT-841090, PRT-841093, PRT-841117, PRT-841120, and PRT-841125), covering approximately 216 acres known as the Hart Triangle (former entire tract), Travis County, Texas. These permits would have allowed for take of the affected species associated with construction, operation, and occupation of residential and commercial development along with streets, utilities, and other improvements and facilities. However, the Service concluded that the seven HCPs would not have avoided, minimized, and mitigated for the potential impacts to the affected species to the maximum extent practicable. Therefore, because of this and other inadequacies in the applications, the Service denied all seven applications.

Subsequently, the Applicants filed suit against the Service claiming it had "taken" their property under the 5th Amendment. The plaintiffs and the Service agreed to enter mediation

beginning in October 1999. After further HCP negotiations, the Service prepared a draft EA/HCP for development of portions of the 216-acre Hart Triangle. The draft EA/HCP was noticed in the **Federal Register** on June 02, 2000, but was never accepted by the Applicants, and therefore never finalized. The permit (TE-027690) was never issued.

Since the June 2000 **Federal Register** Notice, approximately 146 acres of the former 216-acre Hart Triangle have been sold and/or transferred to Travis County and are managed as part of the BCP. The incidental take permit application under consideration is for the remaining 70 acres.

Christopher T. Jones,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E7-25381 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-910-08-1739-NSSI]

Notice of Public Meeting, North Slope Science Initiative, Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP) will meet as indicated below:

DATES: The meeting will be held February 6 and 7, 2008, in Fairbanks, Alaska. On February 6, 2008, the meeting will begin at 9 a.m. at the University of Alaska Fairbanks International Arctic Research Center, Room 401. Public comments will begin at 3 p.m. On February 7, 2008, the meeting will begin at 8:30 a.m. at the same location.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Ph.D., Executive Director, North Slope Science Initiative (910), c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271-3431 or e-mail john_f_payne@blm.gov.

SUPPLEMENTARY INFORMATION: The NSSI, STAP provides advice and recommendations to the NSSI Oversight Group (OG) regarding priority needs for management decisions across the North

Slope of Alaska. These priority needs may include recommendations on inventory, monitoring, and research activities that lead to informed land management decisions. The topics to be discussed at the meeting include:

- Task orders to the STAP.
- NSSI business processes.
- Project coordination with senior NSSI agency staff.
- NSSI priority issues and projects.
- Other topics the OG or STAP may raise.

All meetings are open to the public. The public may present written comments to the STAP through the NSSI Executive Director. When making public comment, participants should know that their address, phone number, e-mail address, or other personal identifying information in their comment, along with their entire comment, may be made publicly available at any time. Commenters can ask that personal identifying information be withheld from their comments, but this cannot be guaranteed. 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, transportation, or other reasonable accommodations, should contact the NSSI Executive Director.

Dated: December 20, 2007.

Thomas P. Lonnie,

Alaska State Director.

[FR Doc. E7-25393 Filed 12-28-07; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-930-5104-FI]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of Public Law 97-451, the Bureau of Land Management (BLM) received a petition for reinstatement of the oil and gas leases, ARES 52198 and ARES 52200 located in Scott and Montgomery County, Ouachita N.F., Arkansas, and ARES 53624 located in Yell County, Ouachita N.F., Arkansas. The petition was filed on time and was accompanied

by all rentals due since the date the leases terminated under law.

FOR FURTHER INFORMATION, CONTACT: Ann Dickerson, Land Law Examiner, at 703-440-1512, or Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre (competitive) and \$5 per acre (non-competitive), or fraction thereof, per year and 16 2/3 percent respectively. The lessee has paid the required administrative fee and publication fee to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the BLM is proposing to reinstate the leases listed above, effective September 1, 2004 (ARES 52198 and ARES 52200) and November 1, 2005 (ARES 53624), under the original terms and conditions of the leases and the increased rental and royalty rates cited above. The BLM has not issued any valid leases affecting the lands.

Dated: December 21, 2007.

Steven R. Wells,

Acting State Director, Eastern States.

[FR Doc. E7-25387 Filed 12-28-07; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-922-08-1310-FI-P;SDM 90990]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease SDM 90990

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), GPE Energy, Inc. and Spyglass Cedar Creek LP timely filed a petition for reinstatement of oil and gas lease SDM 90990, Harding County, South Dakota. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of \$10 per acre and 16-2/3 percent or 4 percentages above the existing competitive royalty rate. The lessee paid the \$500 administration fee for the reinstatement of the lease and \$163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of \$10 per acre;
- The increased royalty of 16 2/3 percent or 4 percentages above the existing competitive royalty rate; and
- The \$163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101-4669, 406-896-5098.

Dated: December 19, 2007.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. E7-25382 Filed 12-28-07; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-320-08-7122-ES-5812; AZA 33391 and AZA 34206]

Arizona: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Yuma County, Arizona, have been examined by the Bureau of Land Management (BLM) and found suitable for classification for lease or conveyance to the Yuma County Free Library District (AZA 33391) and Yuma County (AZA 34206) under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, 43 U.S.C. 869 *et seq.*, and under Section 7 of the Taylor Grazing Act, 43 U.S.C. 315(f), and Executive Order No. 6910.

Gila and Salt River Meridian, Arizona (AZA 33391)

T. 11 S., R. 24 W.

Sec. 6, W¹/₂E¹/₂E¹/₂W¹/₂N¹/₂N¹/₂SW¹/₄SW¹/₄,
W¹/₂E¹/₂W¹/₂N¹/₂N¹/₂SW¹/₄SW¹/₄,
W¹/₂W¹/₂N¹/₂N¹/₂SW¹/₄SW¹/₄.

The area described contains 4.375 acres.

Gila and Salt River Meridian, Arizona (AZA 34206)

T. 11 S., R. 24 W.

Sec. 6, E¹/₂E¹/₂E¹/₂W¹/₂N¹/₂N¹/₂SW¹/₄SW¹/₄,
E¹/₂N¹/₂N¹/₂SW¹/₄SW¹/₄.

The area described contains 5.625 acres.

Neither Yuma County Free Library District nor Yuma County have acquired for public purposes other than recreation, more than the 640-acre limitation allowed in any calendar year according to the regulations found at 43 CFR 2741.7(a)(3).

The Yuma County Free Library District and Yuma County have submitted statements in compliance with the regulations at 43 CFR 2741.4(b). The Yuma County Free Library District is proposing to construct a new library (South County Branch Library) of 30,773 square feet; and Yuma County is proposing to construct new county services buildings (Yuma County South Complex) totaling approximately 18,800 square feet. The Yuma County South Complex would provide satellite offices for the following county departments: Health, Courts, Probation, Assessor, Board of Supervisors, and Information Technology. There would also be parking lots, and other necessary site improvements such as access lanes and retention areas.

DATES: Submit comments on or before February 14, 2008.

ADDRESSES: Detailed information including but not limited to, a proposed development plan and documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Francisca Mueller Realty Specialist, (928) 317-3237.

SUPPLEMENTARY INFORMATION: The lands are not needed for any Federal purposes.

Lease or conveyance of the lands for recreational or public purposes use is consistent with the BLM Yuma District Resource Management Plan dated February 1987, and would be in the public interest.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. The notice will be published in a newspaper of local circulation for three consecutive weeks. The regulations do not require a public meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The lease or conveyance of the land, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945).

2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease or patent issuance.

5. *CERCLA Term*: "Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. 9620 (h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property."

6. *Indemnification Term*: "All lessees, purchasers, or patentees, by accepting a lease or patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other

interests of the United States; (5) Activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State and local environmental and regulatory provisions, throughout the life of the facility, including any closure or post-closure requirements that may be imposed with respect to any physical plant or facility upon the real property under any Federal, State or local environmental laws or regulatory provisions. This covenant shall be construed as running with the above described parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction."

7. The lessee/patentee and its successor or assigns in interest shall comply with and shall not violate any of the terms or provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 241), and requirements of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant thereto (43 CFR part 17) for the period that the lands conveyed herein are used for the purpose for which the grant was made pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits.

Classification Comments: Interested parties may submit comments involving the suitability of the land for development of the South County Branch Library and/or the Yuma County South Complex. Comments on the classification is restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for public purposes. Any adverse comments will be reviewed by the BLM

State Director. In the absence of any adverse comments, the classification will become effective on February 29, 2008. The lands will not be offered for lease or conveyance until after the classification becomes effective.

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 may 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.

(Authority: 43 CFR 2741.5.)

Dated: November 29, 2007.

Bruce Rittenhouse,

Assistant Field Manager for Resources, Land, and Minerals; Acting Field Manager.

[FR Doc. E7-25384 Filed 12-28-07; 8:45 am]

BILLING CODE 4310-32-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-623]

In the Matter of: Certain R-134a Coolant (Otherwise Known as 1,1,1,2-Tetrafluoroethane); Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 20, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of INEOS Fluor Limited of the United Kingdom and INEOS Fluor Americas LLC of St. Gabriel, Louisiana. A supplemental letter and amended complaint, which included another complainant, INEOS Fluor Holdings Limited of the United Kingdom, were filed on December 13, 2007. The complaint, as supplemented and amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain R-134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of the claims of U.S. Patent No. 5,744,658. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, supplement, and amended complaint, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Erin Joffe, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 19, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain R-134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of claims 1 and 2 of U.S. Patent No. 5,744,658, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—
INEOS Fluor Holdings Limited, The Heath, Runcorn, Cheshire, WA74QX, United Kingdom.

INEOS Fluor Limited, The Heath, Runcorn, Cheshire, WA74QX, United Kingdom.

INEOS Fluor Americas LLC, 4990 B ICI Road, St. Gabriel, LA 70776.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

SinoChem Modern Environmental, Protection Chemicals (Xi'an) Co., Ltd., (Corporation China), Jinhe Industrial Area, Xi'an Economic-Technological, Development Zone, Xi'an, 710201, Shaanxi, China.

SinoChem Ningbo Ltd., 21 Jiangxia Str., Ningbo, 315000, Zhejiang, China.

(c) The Commission investigative attorney, party to this investigation, is Erin Joffe, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401E, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-25275 Filed 12-28-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-589]

In the Matter of Certain Switches and Products Containing Same; Notice of Commission Determination To Review a Final Determination on Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review a portion of the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on November 7, 2007, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 7, 2006, based on a complaint filed by ATEN International Co., Ltd. of Taipei, Taiwan, and ATEN Technology, Inc. of Irvine, California (collectively, "ATEN"). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. section 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain switches and products containing the same by reason of infringement of various claims of United States Patent No. 7,035,112. The

complaint named six respondents: Belkin International, Inc., Belkin, Inc. (collectively, "Belkin"), Emine Technology Co., Ltd. ("Emine"), RATOC Systems, Inc., RATOC Systems International, Inc. (collectively, "RATOC"), and JustCom Tech, Inc. ("JustCom"). The ALJ issued an order terminating RATOC and JustCom based on settlement agreements, including a consent order, which the Commission has previously determined to review.

On November 7, 2007, the ALJ issued his final ID, and on November 21, 2007, he issued his recommended determination on remedy and bonding. In his ID, the ALJ found that Belkin's and Emine's accused products do not infringe asserted claims 1 and 12–21. In addition, the ALJ found that the claims are not invalid for anticipation or obviousness. The ALJ also found that the claims are not invalid for lack of written description support and that the patent is not unenforceable for inequitable conduct. Further, the ALJ found that there was no domestic industry based on the asserted patent. ATEN, Belkin, Emine, and the Commission investigative attorney each filed petitions for review of the ALJ's ID and responses to the petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined (1) to review the ALJ's claim construction of the terms "body," "fixedly attached," and "integrated into," and (2) to review the ALJ's determinations on infringement, anticipation, obviousness, and domestic industry, but (3) not to review the ALJ's claim construction of the terms "connector plugs," "connector ports," "cable," or "molded attachment element," and (4) not to review the ALJ's determinations on the level of skill of a person of ordinary skill in the art, written description, and inequitable conduct. With respect to the claim constructions the Commission has determined not to review, the Commission understands the ALJ to have adopted the reasoning of the party whose claim construction he adopted.

The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. How should the claim term "body" be construed? Please cite claim language, specification language, prosecution history, and any relevant extrinsic evidence to support your position. In addressing the claim

language, please comment on whether one of ordinary skill in the art would understand that claim 1 indicates that the body is an enclosure designed to contain a switching circuit and to have a plurality of cables fixedly attached to and extending from it.

2. Does the specification limit the term "body" to an integrally injection-molded plastic enclosure and/or to an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon? Please cite cases addressing whether similar language can be or has been used to limit a claim term.

3. Does the specification distinguish the prior art through its statement that "the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown)" in a way that limits the claims? '112 patent, col. 1, ll. 23–25. Please cite cases addressing whether similar language can be or has been used to distinguish prior art.

4. If the Commission arrives at a claim construction not asserted by the parties or adopts the ALJ's claim construction, should the Commission remand the investigation to the ALJ to develop the record according to the selected claim construction?

5. Under your proposed claim construction of the claim term "body," do the accused products meet this limitation?

6. If the Commission were to construe the claim term "body" (a) to require an integrally injection-molded plastic enclosure, (b) to require an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon, or (c) to exclude "the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown)," do the accused products meet the limitations identified in (a), (b), and (c)?

7. If the Commission were to construe the claim term "body" to exclude the switching circuit, do the accused products' cables extend from the body as required by claim 1 of the '112 patent?

8. Do Emine's products have a plurality of cables?

9. Under your proposed claim construction of the claim term "body," is this limitation disclosed by the prior art?

10. If the Commission were to construe the claim term "body" (a) to require an integrally injection-molded plastic enclosure, (b) to require an enclosure that provides good weather-

resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon, or (c) to exclude "the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown)," do the prior art materials disclose the limitations identified in (a), (b), and (c)?

11. If the Commission were to construe the claim term "body" to exclude the switching circuit, do the prior art materials disclose cables that extend from the "body" as required by claim 1 of the '112 patent?

12. Under your proposed claim construction of the term "body," do ATEN's products meet this limitation?

13. If the Commission were to construe the claim term "body" (a) to require an integrally injection-molded plastic enclosure, (b) to require an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon, or (c) to exclude "the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown)," do ATEN's products meet the limitations identified in (a), (b), and (c)?

14. If the Commission were to construe the claim term "body" to exclude the switching circuit, do ATEN's products' cables extend from the body as required by claim 1 of the '112 patent?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public

interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, January 8, 2008. Reply submissions must be filed no later than the close of business on Tuesday, January 15, 2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment

during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: December 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25279 Filed 12–28–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–624]

In the Matter of Certain Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 21, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Trend Micro Incorporated of Cupertino, California. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,623,600. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Rett Snoterly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 21, 2007, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, or products containing same by reason of infringement of one or more of claims 2 and 4–22 of U.S. Patent No. 5,623,600, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Trend Micro Incorporated, 10101 North De Anza Boulevard, Cupertino, California 95014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Barracuda Networks, Inc., 3175 S. Winchester Blvd., Campbell, California 95008.

Panda Software International S.L., Buenos Aires 12, 48.001 Bilbao, Spain.

Panda Distribution, Inc., 230 N. Maryland Avenue, Suite 303, Glendale, California 91206.

(c) The Commission investigative attorney, pursuant to this investigation, is Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-25278 Filed 12-28-07; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that on December 13, 2007, a Consent Decree in *United States of America v. Merck &*

Co., Inc., Civil Action No. 07-cv-5239, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree with Merck & Co., Inc., ("Merck") resolves the claims of the United States on behalf of EPA against Merck for injunctive relief and civil penalties under section 309 of the Clean Water Act ("CWA"), 33 U.S.C. 1319, in connection with the pharmaceutical and vaccine research and manufacturing facility located in West Point, Montgomery County, Pennsylvania. Pursuant to the consent decree, Merck will pay a total of \$1,575,000 in penalties. Merck will pay a civil penalty of \$750,000 to the United States, \$750,000 to the Commonwealth, and \$75,000 to the Pennsylvania Fish and Boat Commission. In addition, Merck has undertaken, and will continue to take, remedial measures at their facility to prevent further discharges. Finally, Merck has agreed to State Community Environmental Projects and Federal Supplemental Environmental Projects at a value in excess of \$9 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, Attention: Nancy Flickinger (EES), and may be submitted by electronic mail to the following address: pubcomment-ees.enrd@usdoj.gov. Comments should refer to *United States of America v. Merck & Co., Inc.*, Civil Action No. 07-cv-5239 D.J. Ref. 90-5-1-1-09062.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106, and at U.S. EPA Region III's Office, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library,

please enclose a check in the amount of \$7.75 (25 cents per page reproduction cost for a full copy) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-6243 Filed 12-28-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 14, 2007, a proposed Consent Decree in *Barbara Fisher and the United States v. Perma-Fix of Dayton, Inc.*, Civil Action No. 3:04 CV 418, was lodged with the United States District Court for the Southern District of Ohio.

This case began as a citizen suit filed by Barbara Fisher against Perma-Fix of Dayton, Inc. ("Perma-Fix") under section 304 of the Clean Air Act ("CAA" or "Act") for violations of provisions of the federally enforceable Ohio State Implementation Plan ("SIP") adopted pursuant to section 110 of the Act, 42 U.S.C. 7410; violations of the Title V Permit Program at section 502(a) of the Act, 42 U.S.C. 7661a, and 40 CFR 70.5(a) and 70.7(b), and Ohio Admin. Code Chapter 3745-77; violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Off-Site Waste Recovery Operations (the "OSWRO regulations") codified at 40 CFR Part 63, Subpart DD; and violation of the nuisance provisions at Ohio Administrative Code 3745-15-07.

The United States intervened as a plaintiff in this action, seeking injunctive relief and civil penalties under section 113(b) of the Act, 42 U.S.C. 7413(b), against Perma-Fix for violations of the OSWRO NESHAP regulations codified at 40 CFR Part 63, Subpart DD; the general NESHAP regulations at 40 CFR Part 63, Subpart A; the Title V Permit Program at section 502(a) of the Act, 42 U.S.C. 7661a, and 40 CFR 70.5(a) and 70.7(b), and Ohio Admin. Code Chapter 3745-77; and provisions in the federally enforceable Ohio SIP adopted pursuant to section 110 of the Act, 42 U.S.C. 7410. The violations occurred at Perma-Fix's industrial waste processing facility in Dayton, Ohio.

The proposed Consent Decree resolves the United States' claims against Perma-Fix. Under the proposed Consent Decree, Perma-Fix will implement a compliance program that includes: Implementation of certain

pollution control measures at specified emission units; installation of a continuous monitoring system at the facility's regenerative thermal oxidizer ("RTO"); venting of certain vapor streams to the RTO; and engineering evaluation of airflow through the closed vent system to the RTO; visual inspection of vents, the closed vent system, and wastewater transfer lines; the implementation of standard operating procedures for the containment areas, the bioplant, and the solidification process; and the submission of applications for state-issued permits to install and an application for a Clean Air Act Title V permit. In addition, Perma-Fix will pay a civil penalty of \$360,000 and perform three Supplemental Environmental Projects at the cost of at least \$562,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *Barbara Fisher and the United States v. Perma-Fix of Dayton, Inc.*, D.J. Ref. 90-5-2-1-08318.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 602, Federal Building, 200 W. Second Street, Dayton, Ohio 45402, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$17.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that

moment to the Consent Decree Library at the stated address.

Thomas A. Mariani, Jr.,
Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-6242 Filed 12-28-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on November 14, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open DeviceNet Vendor Association, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Camozzi SPA, Brescia, ITALY; and Trinite Automatisering B.V., Mydrecht, THE NETHERLANDS have been added as parties to this venture. Also, Advance Electric Company, Inc., Aichi, JAPAN; AMC Technologies, Edmonton, Alberta, CANADA; AVG Automation (Uticor), Bettendorf, IA; Cooper Power Tools, Lexington, SC; Daniel Woodhead Co. (Woodhead Connectivity), Northbrook, IL; Eilersen Electric A/S, Koddedal, DENMARK; Helix Technology Corporation (Granville-Phillips), Clemsford, MA; MAC Valves, Inc., Wixom, MI; Microwave Data Systems, Rochester, NY; Wizardry Inc., Gardnerville, NV; Woodhead Software & Electronics (SST), Waterloo, Ontario, CANADA; and Woodhead Software & Electronics France, Caudebec Les Elbeuf, FRANCE have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on August 30, 2007. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 7, 2007 (72 FR 62866).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07-6227 Filed 12-28-07; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 10, 2007, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Oripavine (9330), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a). Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than February 29, 2008.

Dated: December 20, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7-25329 Filed 12-28-07; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jon Karl Dively, D.D.S.; Denial of Application

On December 14, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Jon Karl Dively, D.D.S. (Respondent), of Macomb, Illinois. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that he had committed acts which would render his registration "inconsistent with the public interest." Show Cause Order at 1 (citing 21 U.S.C. 823(f)).

The Show Cause Order specifically alleged that Respondent, while holding a DEA registration (which he had since surrendered), had "prescribed large amounts of hydrocodone, a schedule III controlled substance, to [his] wife, on many occasions," and did so "with knowledge that she was addicted to" the drug. *Id.* The Show Cause Order alleged that "[t]he prescriptions were not written in the usual course of medical practice," and thus violated Federal law and DEA regulations. *Id.*

The Show Cause Order further alleged that "[f]rom at least mid-2003 to May 2005," Respondent had "abused hydrocodone." *Id.* Relatedly, the Show Cause Order alleged that Respondent had admitted to DEA investigators that he was "taking regularly Oxycontin and oxycodone," notwithstanding that he was being treated for drug and alcohol abuse. *Id.* at 1–2. The Show Cause Order also alleged that during a December 6, 2005 interview with DEA investigators, Respondent appeared to be impaired but denied using controlled substances and refused to take a drug test. *Id.* at 2. Relatedly, the Show Cause Order alleged that in January 2006, DEA received a letter from an individual affiliated with Rush Behavioral Health, which indicated that Respondent "needed counseling, close supervision of [his] medications, verified attendance at Alcoholic Anonymous and monitoring by a physician's monitoring program." *Id.*

On December 27, 2006, the Show Cause Order was served on Respondent by certified mail as evidenced by the signed return-receipt card. Thereafter, on January 16, 2007, Respondent submitted a letter in which he expressly waived his right to a hearing. Respondent did, however, offer a response to each of the allegations of the

Show Cause Order. See Ltr of Resp. to Hearing Clerk (dated Jan. 3, 2007).

Based on Respondent's letter, I find that he has waived his right to a hearing. See 21 CFR 1301.43(c). However, in accordance with 21 CFR 1301.43(c), Respondent's letter is made a part of the record and will "be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein." *Id.* Having considered the entire record, I issue this Decision and Final Order and make the following findings.

Findings

On December 28, 2005, Respondent, an Illinois licensed dentist, applied for a DEA registration to handle controlled substances in schedules II through V. Respondent had surrendered his DEA registration on December 6, 2005, upon the conclusion of an interview with a DEA Special Agent (SA), a DEA Diversion Investigator (DI), and an Inspector from the Illinois Department of Financial and Professional Regulation.

Respondent first came to the attention of this Agency on September 26, 2005, when the state Inspector notified a DI that he had received information indicating that Respondent was prescribing schedule III controlled substances containing hydrocodone to his wife. 21 CFR 1308.13(e). Upon receipt of this information, the DI determined that several pharmacies had filled the prescriptions including DrugStore.com (whose prescriptions are filled by Rite Aid Pharmacy), Osco Drug, and Hy-Vee Pharmacy. The DI then contacted each entity and requested that it provide a list of the prescriptions it had filled which had been issued by Respondent.

Subsequently, Rite Aid provided a spreadsheet listing thirty-seven controlled-substance prescriptions it filled which Respondent had issued in his wife's name. The prescriptions covered the period beginning on October 29, 2003, and ending on January 24, 2005. Osco Drug also provided a list of Respondent's controlled-substance prescriptions which it filled. This list included seven prescriptions which Respondent issued between September 21 and December 26, 2003.

Thereafter, on December 6, 2005, DEA and State investigators visited Respondent and interviewed him. When asked about the prescriptions he had written for his wife, Respondent asserted that he had done so because she had herniated cervical discs. Respondent acknowledged, however,

that he issued the prescriptions outside of the course of his professional practice as a dentist; he then admitted that he had supplied his wife because she was addicted to hydrocodone. Respondent further asserted that he had stopped writing the prescriptions six months earlier.

Moreover, during the interview, Respondent's speech was slow and slurred, his thought process was disjointed, and he appeared to have trouble completing his thoughts. When the investigators expressed to Respondent their concern that he was then impaired, Respondent denied that this was so. The State Inspector then suggested that Respondent obtain a drug test to prove that he was not impaired.

Respondent then told investigators that he had herniated lumbar discs and had been prescribed fentanyl patches, Ultracet, and Lidoderm for the condition by his prior physician. He further related that his new physician, whom he met at an Alcoholic Anonymous meeting, was prescribing Oxycontin for him. Respondent then agreed to voluntarily surrender his DEA registration.

Two days later, Respondent telephoned the DI and left a voice mail message. In the message, Respondent questioned the need for a drug test, as well as why the DI could not have allowed Respondent to continue with his registration and watch him "like a hawk." In the message, Respondent's speech was still slow and slurred.

On January 9, 2006, Respondent again contacted the DI asking how long it would take to regain his DEA registration. In that conversation, Respondent asked the DI whether he had received a letter from Rush Behavioral Health, a Chicago-based clinic which treats drug and alcohol addiction. The DI related to Respondent that he had not received the letter.

On January 17, 2006, the DI received a letter from an Intake Coordinator at Rush. According to the investigative report, in the letter, the Intake Coordinator noted that she had evaluated Respondent and had found that from mid-2003 through May 2005, Respondent had written Vicodin prescriptions in his wife's name for his personal use.¹ According to the report, the Intake Coordinator noted that Respondent "seem[ed] impaired," and "very anxious." The letter added,

¹ The letter was not submitted into the record. Rather, its contents were summarized in an investigative report. The report does not, however, establish what the Intake Coordinator's qualifications and duties are, the date she evaluated Respondent, and what the basis for this finding was.

however, that “this could have been from this high dosage” of Provigil. The letter added that Respondent needed counseling, close supervision of his medications, accountable attendance at AA, and monitoring by a physician’s monitoring program to get his controlled-substance prescribing authority back.

On February 6, 2006, Respondent again called the DI and asked whether he had received the letter from Rush. Respondent also told the DI that he was seeing a new psychiatrist. Finally, Respondent stated that while his wife’s physician had attempted to get her off of narcotics, it just made matters worse. Respondent added that his wife had quit “cold turkey” and that “it was rough.”

In his letter responding to the Show Cause Order, Respondent admitted that he had prescribed large amounts of schedule III drugs containing hydrocodone to his wife knowing that she was addicted to the drug, and that the prescriptions were not issued in the usual course of his professional practice. Resp. Ltr. at 2. Respondent denied, however, that he had abused hydrocodone between mid-2003 and May 2005. *Id.* He also denied that he was under treatment for drug and alcohol abuse during this period. *Id.* Respondent also asserted that he had been sober for twenty-five years. *Id.*

Respondent further admitted that he appeared to be impaired during the December 6, 2005 interview. *Id.* Respondent asserted, however, that this was because of his use of Provigil pursuant to a prescription. *Id.* Respondent further admitted that during the interview, he denied abusing controlled substances and refused to take a drug test. *Id.* Respondent asserted, however, that “on December 7, 2005, I did submit to a drug analysis of urine.” *Id.* Finally, Respondent admitted that during the interview, he had admitted that he “was regularly taking Oxycontin and Oxycodone for a back injury” as prescribed by his physician. *Id.* Respondent further stated that he could neither admit nor deny the allegation regarding the letter from Rush Behavioral Health because he had not seen the letter.

The record also contains a copy of a consent order which Respondent entered into with the Illinois Department of Financial and Professional Regulation. The consent order noted that “[t]he Department alleges that Respondent engaged in improper medication prescribing practice.” Consent Order at 1. Respondent pled no contest and agreed to various sanctions including the suspension of his dental license for two

weeks followed by twenty-four months of probation. During the probation, Respondent is required to submit to monthly alcohol-drug testing on twenty-four hours notice, to complete ten hours of continuing education in jurisprudence, and to file quarterly reports with the State regarding his activities. Respondent was also fined \$1,000.

Discussion

Section 303(f) provides that “[t]he Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest.” 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
 - (2) The applicant’s experience in dispensing * * * controlled substances.
 - (3) The applicant’s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
 - (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
 - (5) Such other conduct which may threaten the public health and safety.
- Id.*

“[T]hese factors are considered in the disjunctive.” *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for a registration should be denied. *Id.* Moreover, I am “not required to make findings as to all of the factors.” *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall v. DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

While I have considered all of the factors, I conclude that the Government has made out a *prima facie* case under Factors Two and Four to deny Respondent’s application based on his prescribing of controlled substances to his wife. While I am mindful that the State has allowed Respondent to maintain his dental license, Respondent has not presented sufficient evidence to establish that he should be entrusted with a new DEA registration. I therefore conclude that Respondent’s application should be denied.

Factors Two and Four—Respondent’s Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Laws

Under DEA regulations, “[a] prescription for a controlled substance

* * * must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice* * *. An order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [the CSA] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.” 21 CFR 1306.04(a). As the Supreme Court recently explained, “the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse.” *Gonzales v. Oregon*, 126 S.Ct. 904, 925 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135 (1975)).

The record in this case establishes that Respondent issued numerous prescriptions for controlled substances in the name of his wife. While Respondent initially maintained that he wrote the prescriptions because his wife had herniated cervical discs, Respondent subsequently admitted that in doing so, he acted outside of the course of his professional practice as a dentist. Respondent later admitted that he had written the prescriptions because his wife was addicted to hydrocodone. Respondent thus violated Federal law.

The Government also alleged that Respondent was personally abusing controlled substances. More specifically, the Government alleged that Respondent was impaired during the December 2005 interview and that he had admitted to taking Oxycontin and oxycodone “despite the fact that [he was] under treatment for addiction.” Show Cause Order at 2.

It is true that the evidence indicates that Respondent slurred his speech during the interview (and in phone calls thereafter) and that he had trouble completing his thoughts. The Government, however, has not proved that Respondent’s symptoms were caused by his abuse of a controlled substance or that either of the controlled substances he was then taking was not lawfully prescribed to him to treat a legitimate medical condition. Indeed, the letter from the Intake Coordinator at Rush supported Respondent’s contention that his symptoms could have been caused by the Provigil, and the Government produced no evidence establishing that this drug was not lawfully prescribed to him, or that he was taking in excess of the dosage prescribed by his physician.

Nor did the Government offer any evidence rebutting Respondent’s contention that the Oxycontin that he

admitted to “regularly taking” had been lawfully prescribed to him. Finally, while the Government alleged in the Show Cause Order that Respondent had refused to take a drug test upon being challenged to do so by the State inspector, Respondent asserts that he did so.

Here again, the Government offered no evidence to rebut Respondent’s contention. Indeed, the Government produced no evidence showing that it demanded that Respondent produce the test results and that he failed to do so. I therefore conclude that the allegations that Respondent was personally abusing controlled substances at the time of the December 2005 interview and thereafter are not proved by substantial evidence.²

While I reject the allegations of personal abuse, Respondent’s numerous violations of Federal law in prescribing controlled substances to his wife make out a *prima facie* case for the denial of his application. Where the Government has made out a *prima facie* case, the burden shifts to the applicant to show why granting the application would nonetheless be in the public interest. See *Gregory D. Owens*, 67 FR 50461, 50464 (2002).

As this Agency has repeatedly held, a proceeding under section 303 “is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused * * * their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be entrusted with the responsibility carried by such a registration.” *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). In short, Respondent must prove by a preponderance of the evidence that he can be entrusted with the authority that a registration provides by demonstrating that he accepts responsibility for his misconduct and that the misconduct will not re-occur.

While Respondent admitted in response to Show Cause Order that he violated Federal law by prescribing controlled substances to his wife, he has

offered no evidence to establish that he will not engage in similar acts in the future.³ Respondent has therefore failed to rebut the Government’s *prima facie* showing that granting him a new registration “would be inconsistent with the public interest.” 21 U.S.C. 823(f). Accordingly, Respondent’s application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b) and 0.104, I order that the application of Jon K. Dively, D.D.S., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective January 30, 2008.

Dated: December 13, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7-25347 Filed 12-28-07; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05-24]

The Lawsons, Inc., t/a The Medicine Shoppe Pharmacy; Denial of Application

On March 4, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to The Lawsons, Inc., t/a The Medicine Shoppe Pharmacy (Respondent) of Cheverly, Maryland. The Show Cause Order proposed the denial of Respondent’s application for a DEA Certificate of Registration as a pharmacy on various grounds.

More specifically, the Show Cause Order alleged that in October 1999, the Prince George’s County, Maryland, Police Department received information that Ms. Tina M. Hart-Lawson, Respondent’s chief pharmacist, was filling fraudulent prescriptions. Show Cause Order at 1. The Show Cause Order further alleged that on multiple occasions between November 11, 1999,

and February 9, 2000, two undercover officers had presented fraudulent prescriptions for Percocet, a schedule II controlled substance, and Vicodin, a schedule III controlled substance, to Ms. Lawson, who filled the prescriptions without first verifying them. *Id.* at 1-3. The Show Cause Order alleged that all of the prescriptions presented by the undercover officers “had indicia of fraud” and “were written in the name of a fictitious doctor and DEA registration,” and that Ms. Lawson did not report any of the fraudulent prescriptions to the police. *Id.* at 3.

The Show Cause Order also alleged that on February 4, 2000, Ms. Lawson told one of the undercover officers that she knew that the prescriptions presented by the officer two days earlier were forged, but then proceeded to partially fill one of them anyway. *Id.* at 2. The Show Cause Order alleged that Ms. Lawson had told the undercover officer that a local police officer was present when the undercover officer presented the prescriptions and had asked Ms. Lawson about them. *Id.* at 2-3. Ms. Lawson allegedly told the undercover officer that because she did not want the latter “to get in trouble,” she told the local police officer that the undercover officer “was a cancer patient.” *Id.* at 3.

Next, the Show Cause Order alleged that on February 9, 2000, the other undercover officer presented a fraudulent prescription for Percocet. *Id.* The Show Cause Order alleged that Ms. Lawson filled the prescription, and after being paid for it, told the undercover officer that she “knew the prescription was fraudulent,” but “would not call the police” because the undercover officer was “a sister.” *Id.* The Show Cause Order further alleged that Ms. Lawson was subsequently arrested, and on March 8, 2002, pled guilty to having unlawfully distributed oxycodone in violation of 21 U.S.C. 841(a)(1). *Id.*

Finally, the Show Cause Order alleged that on September 13, 2003, Samuel L. Lawson, M.D., filed an application on behalf of Respondent for a new DEA registration. *Id.* The Show Cause Order alleged that in support of its application, Respondent had attached a signed statement of Ms. Lawson which contained several material falsehoods and omissions. *Id.* at 3-4. The Show Cause Order thus concluded by alleging that because Ms. Lawson “has a felony conviction and made false statements in the Medicine Shoppe’s application, granting a DEA registration to [Respondent] would not be consistent with the public interest.” *Id.* at 4.

Respondent, through its counsel, requested a hearing. The matter was

² There is also some evidence suggesting that Respondent admitted to the Intake Coordinator at Rush that some of the prescriptions he wrote for his wife were for his personal use. This conduct would also violate Federal law. See 21 U.S.C. 843(a)(3) (“It shall be unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.”). The letter which reports these admissions was not included in the record. Moreover, this evidence does not establish that Respondent was abusing controlled substances at the time of the December 2005 interview and thereafter.

³ I acknowledge that the State has allowed Respondent to retain his dental license and placed him on probation. The consent order, however, merely recites that “[t]he Department alleges that Respondent engaged in improper medication prescribing practice,” and does not contain the specific allegations that were made against Respondent. Consent Order at 1. It is thus not even clear what evidence the State had obtained and, in any event, there are a number of reasons why the State may have decided to settle the case. I thus decline to defer to the State’s decision. See *John Kennedy*, 71 FR 35708 (2006) (declining to defer to State board’s restoration of medical license; a “state license is a necessary, but not [a] sufficient condition for [a DEA] registration”).

assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Arlington, Virginia, on April 18, 2006. At the hearing, both parties introduced documentary evidence and called witnesses to testify. Following the hearing, both parties submitted briefs containing proposed findings of fact, conclusions of law, and argument.

On November 6, 2006, the ALJ issued her initial Opinion and Recommended Decision (ALJ 1). In this decision, the ALJ concluded that granting Respondent's application "would not be inconsistent with the public interest." ALJ 1, at 19. The ALJ further noted, however, that Respondent did not currently hold a Maryland controlled dangerous substances license and therefore recommended the denial of its application. *Id.* at 20. The ALJ further stated that in the event Respondent obtained the state license before the record was submitted to my office, she would change her recommendation. *Id.*

Thereafter, on November 27, 2006, the Government filed exceptions to the ALJ's decision. ALJ Supplemental Decision at 2 (hereinafter, ALJ Dec). The next day, Respondent moved for reconsideration on the ground that it had received a state controlled-substance license. *Id.* On January 10, 2007, the ALJ granted Respondent's motion, and on February 12, 2007, the ALJ issued her supplemental decision which recommended that Respondent's application be granted. The record was then transmitted to me for final agency action.

Having considered the entire record, I hereby issue this Decision and Final Order. For reasons set forth below, I reject the ALJ's conclusion that "granting Respondent's application . . . would not be inconsistent with the public interest." ALJ Dec. at 19. In so holding, I adopt the ALJ's finding "that Dr. Lawson made substantial misrepresentations in the letter she attached to Respondent's . . . application." *Id.* I also note that the ALJ found credible Ms. Lawson's "acknowledgments at the hearing that she made mistakes . . . and her expressions of remorse for those mistakes." *Id.* at 19–20. But as the ALJ also found, Ms. Lawson "provided no testimony as to why she" made several materially false statements in connection with the application. *Id.* at 19. Thus, even if Ms. Lawson has acknowledged her wrongdoing in filling fraudulent prescriptions, she entirely failed to address her later misconduct in submitting a false statement in connection with her application. Because I conclude that the

falsifications cannot be attributed to mere carelessness or negligence, I conclude that Ms. Lawson (and Respondent) cannot be entrusted with a registration. I make the following findings.

Findings

Respondent, a franchise of The Medicine Shoppe International, Inc., is a retail pharmacy located in Cheverly, Maryland. GX 1, RX 14. Respondent is owned by Samuel Lawson, M.D., and Tina Hart-Lawson, Ph.D. and R.Ph., who are married to each other. ALJ at 2. Ms. Hart-Lawson began practicing as a pharmacist in 1981, Tr. 193, and was Respondent's Chief Pharmacist in the fall of 1999 when Ms. Lawson and the pharmacy first came to the attention of the Prince George's (P.G.) County Police Department when the latter received information that Ms. Lawson was knowingly filling fraudulent prescriptions. GX 14, at 1.

During the initial phase of the investigation, a DEA Diversion Investigator (DI) went to Respondent and retrieved the prescriptions that it had filled for a person that the P.G. County police had recently arrested. Tr. 19. During the visit, the DI noticed that when Respondent's customers dropped off their prescriptions, Ms. Lawson did not verify them with their physicians. *Id.* at 20.

Thereafter, the DI suggested to the P.G. County Police that further investigation of Ms. Lawson and Respondent was warranted. *Id.* at 20–21. Accordingly, the investigators decided to create fictitious prescriptions using the name of Deleon E. Ambrozewicz, M.D., and a false DEA registration number. *Id.* at 21. The prescriptions also included a telephone number, which if called, would result in the caller hearing that the number was not available. *Id.* The investigators also decided to use two persons to fill out the prescriptions and to leave out essential information necessary to fill a prescription such as the date, the quantity to be dispensed, and the number of refills. *Id.* at 47.

Between October 18, 1999, and February 9, 2000, two P.G. County detectives carried out a total of 10 undercover visits to Respondent during which they presented fraudulent prescriptions to Ms. Lawson. ALJ at 4. Using the undercover name of Amber Johnson, the first detective (hereinafter, Detective I) visited Respondent on October 18, November 11, November 16, December 1, and December 7, 1999, as well as on February 9, 2000. *Id.* Using the undercover name of Colleen Talliver, the second detective (hereinafter, Detective II) visited

Respondent on January 7, January 12, February 2, and February 4, 2000. *Id.*

On October 18, 1999, Detective I visited Respondent and presented to Ms. Lawson prescriptions for Percocet and Soma,¹ which were "issued" under the name of Dr. Ambrozewicz. Tr. 76, GX 15. Ms. Lawson called the telephone number on the prescription, determined that it was not a "good number," and refused to fill the prescription. Tr. 75–76.

On November 11, 1999, Detective I returned to Respondent and presented to Ms. Lawson another fraudulent prescription for Percocet "issued" by Dr. Ambrozewicz. *Id.* at 78–80. According to the Detective, Ms. Lawson asked her only if she had insurance. *Id.* at 82–83. Ms. Lawson then filled the prescription. *Id.* at 81–82; *see also* GX 10, at 2–3.

Five days later, Detective I returned to Respondent and presented to Ms. Lawson another fraudulent Percocet prescription "issued" by Dr. Ambrozewicz. Tr. 84; GX 11. On this occasion, Ms. Lawson asked the Detective whether she had been to the pharmacy before. Tr. 84. The Detective told Ms. Lawson that she had been there the week before to which Ms. Lawson responded: "Oh, you must be in pain." *Id.* The Detective answered affirmatively and Ms. Lawson filled the prescription. *Id.* at 84–85; *see* GX 11, at 2.

On December 1, 1999, Detective I returned to Respondent and presented to Ms. Lawson fraudulent prescriptions for both Percocet and Vicodin "issued" by Dr. Ambrozewicz. *Id.* at 86. According to the Detective, Ms. Lawson may have asked her whether she had been there before but did nothing to verify whether the prescriptions were valid. *Id.* at 86–87. Moreover, while these drugs are contraindicated, *id.* at 217, Ms. Lawson filled both prescriptions. *Id.* at 87–88; GX 7 & 8.

Six days later, Detective I returned to Respondent and again presented to Ms. Lawson fraudulent prescriptions for Percocet and Vicodin "issued" by Dr. Ambrozewicz. Tr. 88–89. According to the Detective, Ms. Lawson asked only whether she had insurance and had been to the pharmacy before; the Detective affirmatively answered the latter question. *Id.* at 89. Ms. Lawson did nothing to verify the validity of the prescriptions and filled both of them. *Id.* at 89–90; *see also* GXs 5 & 6.

Detective I did not return to Respondent until February 9, 2000, when she presented to Ms. Lawson another Percocet prescription "issued" by Dr. Ambrozewicz. GX 9; Tr. 90–91.

¹ Soma (carisoprodol) is not a controlled drug.

On this occasion, Ms. Lawson told the Detective that she knew that the prescription was “fake,” because she had another customer who had used the same doctor’s name and had determined that the “doctor did not exist.” GX 14, at 2. After telling the Detective that she would let it go this time because she had already filled the prescription, Tr. 91, Ms. Lawson placed her telephone on its speaker-phone function and dialed the phone number listed on the prescription. GX 14, at 2–3. Ms. Lawson then stated: “I will let you go this time, and I’m not going to call the police because you’re a sister.” *Id.* at 3; Tr. at 91. The Detective paid cash for the Percocet and left Respondent. Tr. at 91.

On January 7, 2000, Detective II visited Respondent and presented to Ms. Lawson a fraudulent Soma prescription “issued” by Dr. Ambrozewicz. *Id.* at 26. The prescription did not include the quantity, *id.*; Ms. Lawson proceeded to ask the Detective if thirty tablets “would be enough?” *Id.* at 27. After the Detective told Ms. Lawson that thirty tablets “would be fine,” Ms. Lawson filled the prescription. *Id.* at 27.

On January 12, 2000, Detective II returned to Respondent and presented to Ms. Lawson a fraudulent prescription for Percocet. *Id.* at 28. The prescription, which was “issued” by Dr. Ambrozewicz, was undated and left blank the number of refills. GX 12. According to the Detective, who remained present upon tendering the prescription, Ms. Lawson filled the prescription without verifying it. Tr. 30–31; GX 12, at 2–3.²

On February 2, 2000, Detective II returned to Respondent and presented to Ms. Lawson fraudulent prescriptions for Vicodin and Percocet. Tr. 32. The Vicodin prescription, which was “issued” by Dr. Ambrozewicz, was again undated and left blank the number of refills.³ GX 13, at 1. Ms. Lawson informed Detective II that because of a bad snowstorm two days earlier, a shipment had not come in, and therefore, she was unable to fill the Percocet prescription and could only fill

half of the Vicodin prescription. Tr. 32. Ms. Lawson then dispensed tablets of generic Vicodin to the Detective. GX 13, at 2–3.

On February 4, 2000, the Detective returned to Respondent in an attempt to obtain the remaining half of the Vicodin prescription and the Percocet prescription which had not been filled. Tr. 36. Ms. Lawson pulled the Detective aside and told her that she knew the prescriptions were fraudulent, and that Dr. Ambrozewicz did not exist. *Id.* at 36–37. Ms. Lawson also told the Detective that during her previous visit, a local police officer was in the store. *Id.* at 37. Ms. Lawson told the Detective that “she did not say anything in front of the police officer” because she did not want the Detective to get in “trouble.” GX 14, at 2; *see also* Tr. 37. Ms. Lawson then told the Detective that she had only given her half the Vicodin prescription because she wanted the Detective to leave. Tr. 37. Ms. Lawson also told the Detective that she knew the latter needed help and hoped she would get it. *Id.*

Thereafter, the United States Attorney indicted Ms. Lawson. Tr. 122. Ms. Lawson pled guilty, and, on April 29, 2002, the United States District Court convicted her of the unlawful distribution of oxycodone on February 9, 2000, in violation of 21 U.S.C. 841(a)(1). GX 3. Ms. Lawson was sentenced to five months imprisonment and three years of supervised release, which also included a five-month term of home detention. GX 3, at 2–4. Prior to entering her plea, Ms. Lawson met with P.G. County Detectives and submitted to an interview. Tr. 56. Moreover, at some point not specified in the record, Respondent surrendered its DEA registration. Tr. 134.

On September 13, 2003, Respondent submitted an application for a new registration which was completed by Respondent’s husband. GX 1. On the application, Respondent answered “yes” to the question whether it had “ever surrendered or had a federal controlled substance registration revoked * * * or denied?” GX 1, at 1. Respondent also answered “yes” to the question which asks a non-publicly traded corporate entity whether “any officer, partner, stockholder, or proprietor [has] been convicted of a crime in connection with controlled substances under state or federal law?” *Id.* In explaining its answer to the latter question, Respondent referred to the attached statement of Ms. Lawson regarding the events surrounding her conviction. GX 1, at 2.

In this statement, Ms. Lawson wrote:

Approximately 3 years ago (March 2000), a female patient exhibiting excruciating pain, came to the pharmacy with a prescription for a scheduled drug (percocet). In spite (sic) of the fact that this patient was extremely conniving, I followed my usual professional protocol of verifying and authenticating the said prescription. My finding lead me to believe that, this was a fraudulent prescription. My professional judgment at the time on a very busy day, was to inform the police of this occurrence. However, in order to substantiate my finding, I decided to partial (sic) fill so that the police will apprehend the patient with the item in hand.

For the past 20 years as a licensed pharmacist, I have turned away several such prescriptions. On this busy day in question, I was trying to perform my civic duty by involving the police. No sooner had I made this professional judgement (sic), than I was later informed that this was a set up by an agent.

Upon further investigation, it was concluded that I had performed my duties in the past with distinction and without prior criminal record, but the professional judgment made by me on this day in question was in error and uncharacteristic.

Id. at 3. Upon receipt of Respondent’s application, DEA commenced this investigation.

Based on Ms. Lawson’s guilty plea, on March 25, 2005, the Maryland Board of Pharmacy charged Ms. Lawson with violating Md. Health Occ. Code Ann. § 12–313, a provision which authorizes the Board to discipline a licensee upon a conviction or guilty plea “to a felony or to a crime involving moral turpitude.” RX 16, at 1. On the same day, the Board also charged Respondent with a violation of Maryland law based on Ms. Lawson’s criminal conduct. *See* GX 17.

On August 1, 2005, “over the objection of the [State’s] prosecutor,” GX 16 at 2, the Board and Ms. Lawson agreed to a settlement under which her license was “suspended for three years, with all three years immediately [s]tayed.” *Id.* at 3. The Board also placed Ms. Lawson on “probation for a minimum of three years,” and ordered her to complete an ethics course. *Id.* at 4. Relatedly, the Board also suspended Respondent’s pharmacy permit for three years with all three years stayed and imposed a fine of \$2,500. *See* GX 17, at 4.

Both Mr. and Mrs. Lawson testified at the hearing. Mr. Lawson testified that he and his wife “met on several occasions with the agents that * * * testified” in the proceeding, and that during these meetings, he “was able to find out a lot of things that had happened in terms of all the different incidents.” Tr. 156. Mr. Lawson further testified that the various investigations had concluded that Ms. Lawson had received “negligible”

² On April 3, 2000, the police executed a search warrant at Respondent and seized the various prescriptions. This prescription bore the handwritten notation “fraudulent.” GX 12, at 1. According to the Detective, the notation was not on the prescription when she tendered it to Ms. Lawson. Tr. 29.

³ The record does not include a copy of the Percocet prescription which Detective II presented to Ms. Lawson. The Vicodin prescription bears the notations “forged” and “Called 911.” GX 13. It also included information describing the Detective’s physical appearance and automobile. *See id.* at 2. Ms. Lawson did not, however, testify regarding this information. ALJ at 8.

financial gain from her misconduct. *Id.* at 157. Mr. Lawson stated that when the Lawsons went before the Maryland Board “the incidents that had been put forward by DEA and also by the prosecuting attorney during the first adjudication process, all that information was relayed * * * to them.” *Id.* at 162. Mr. Lawson also testified that to his knowledge, his wife had not received any further complaints regarding her dispensing of controlled substances. *Id.* at 172–73.

Mr. Lawson testified that a DEA diversion investigator was aware that his wife had pled guilty to the criminal charge. *Id.* at 174. Mr. Lawson also testified that another diversion investigator had “objected” to the answers that Respondent had provided to the liability questions (in section 4) of the application because they did not reflect his wife’s conviction; the DI then sent him a new application and instructed him to “fill [it] out correctly.” *Id.* at 178; *see also id.* at 188–89. Mr. Lawson testified that he did so, *id.* 179 & 189, and that the information in his wife’s statement:

was constructed by me after listening to [her] years later as to what may have happened when the particular application that she pled guilty to, that one count, what had transpired in my absence based, on her best recollection. * * * I put those words together, not to mean those were the exact things that this agent might have purported before Tina. It was based on her physical appearance and whatever other demeanors that she may have had on that particular day. *Id.* at 179.

Mr. Lawson testified that his wife had taken continuing education courses and completed the ethics course mandated by the Maryland Board. *Id.* at 183. Mr. Lawson further testified that since the events that led to her conviction, his wife “has been extremely cautious and she does her best to follow all the regulations.” *Id.*

Ms. Lawson testified that in the past, she “used to take [her customer’s] word,” but that since her arrest, she had become “more careful” and “more suspicious of anybody that comes into the pharmacy.” *Id.* at 195. Ms. Lawson further stated that while taking the required ethics course, she recognized that she had not been “dealing with [her customers] on a professional basis” because she would talk to them about “their private life and everything,” but now she keeps her interactions “short and simple” and only “deal[s] with them professionally.” *Id.* at 197.

Ms. Lawson testified that even when she fills pain medications which are not controlled substances, she now verifies the prescription with the prescribing

physician. *Id.* at 198. Ms. Lawson added that she also takes more time to fill the prescription and tells her customers that “if they cannot wait, they can go to another pharmacy.” *Id.* Ms. Lawson further testified that she had attended a number of continuing education courses. *Id.* at 200–01. Finally, Ms. Lawson testified that she “should have done things differently and * * * I made a big error,” and wanted a second chance “to show [DEA] that I’m a changed person.” *Id.* at 201.

Ms. Lawson offered no testimony, however, regarding the statement she signed and submitted in support of Respondent’s application. *See generally id.* 191–203. Moreover, when asked by her counsel whether there was “anything else” she wanted the ALJ to know as to why it would be “in the public interest to” grant the application, Ms. Lawson answered: “I can’t think of anything right now.” *Id.* at 203.⁴

On cross-examination, Ms. Lawson testified that she did not recall the Detective who presented the prescription which led to her indictment having ever been in her store. *Id.* at 211. She also testified that she did not recall the other Detective having been in her store until meeting the Detective during a de-briefing after her arrest. *Id.* Ms. Lawson further testified that she did not remember to which Detective she had given the partial prescription, that it had “been a very long time [since] all these things happened,” and that she had only a “vague recollection of any of these prescriptions being presented to me.” *Id.* at 212. Moreover, when asked whether she knew on December 7, 1999, whether “DeLeon Ambrozewicz was a legitimate doctor?” Ms. Lawson answered: “I really don’t remember. It’s been a long time.” *Id.* at 215.

Ms. Lawson admitted that Percocet and Vicodin are contraindicated, but then testified that she did not remember whether she had advised Detective II of this fact when she dispensed both drugs to her on December 1, 1999. *Id.* at 216–17. Ms. Lawson also could not explain why her pharmacy’s computer-generated prescription printout indicated that one refill was authorized for the February 2, 2000 Vicodin prescription issued to Det. II when the initial script had left this blank. *Id.* at 218; *see also* GX 13 at 1–2. Ms. Lawson testified that she “should have * * * checked” the prescription and “done things differently.” Tr. 218. Ms. Lawson further maintained that “[i]n those days,

it used to be very busy at the pharmacy” and that she “did not have any help,” but that she now “double-checks” prescriptions, “scrutinizes anything that leaves the pharmacy,” and doesn’t “rush.” *Id.* at 219.

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner’s registration may be denied upon a determination “that the issuance of such registration would be inconsistent with the public interest.” 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant’s experience in dispensing * * * controlled substances.
- (3) The applicant’s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

Id.

“These factors are * * * considered in the disjunctive.” *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I “may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied.” *Id.* Moreover, I am “not required to make findings as to all of the factors.” *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005).

Furthermore, under Section 304(a)(1), a registration may be revoked or suspended “upon a finding that the registrant * * * has materially falsified any application filed pursuant to or required by this subchapter.” 21 U.S.C. 824(a)(1). Under agency precedent, the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. § 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See Anthony D. Funches*, 64 FR 14267, 14268 (1999); *Alan R. Schankman*, 63 FR 45260 (1998); *Kuen H. Chen*, 58 FR 65401, 65402 (1993). Thus, the allegation that Respondent materially falsified its application is properly considered in this proceeding. *See Samuel S. Jackson*, 72 FR 23848, 23852 (2007).

In this case, I agree with the ALJ that Respondent and Ms. Lawson materially

⁴ Ms. Lawson also produced several letters of recommendation including one from her probation officer. *See* RX 5.

falsified its application for registration. ALJ Dec. at 19. While noting that Ms. Lawson “provided no testimony as to why she” made these “significant misrepresentations,” the ALJ apparently treated the material falsification as just “other conduct” to be considered under Factor Five of the public interest analysis and recommended that the application be granted. *Id.* at 19–20.

The ALJ’s approach gave insufficient weight to Ms. Lawson’s separate act of misconduct in making several false statements in connection with Respondent’s application. Just as materially falsifying an application provides a basis for revoking an existing registration without proof of any other misconduct, *see* 21 U.S.C. § 824(a)(1), it also provides an independent and adequate ground for denying an application. *Cf. Bobby Watts, M.D.*, 58 FR 46995 (1993).

Ms. Lawson’s statement was offered as an explanation of the events which surrounded her dispensing of Percocet to Detective I on February 9, 2000. With respect to that statement, the ALJ concluded that Dr. Lawson made several “false statements in the letter.” ALJ at 19. In particular, Ms. Lawson attempted to portray herself as the victim of deception stating that she filled the prescription in part because the Detective was “extremely conniving” and exhibited “excruciating pain.” GX 1, at 3. The Detective—whom the ALJ found credible (ALJ at 19)—testified, however, that Ms. Lawson told her that she knew that Dr. Ambrozewicz “was a fictitious doctor,” Tr. 91, but would “let this one go because she had already filled the prescription” and “was looking out for her.” *Id.*

Moreover, while Ms. Lawson represented that it was “very busy” when she filled the prescription, GX 1, at 3; DI Valentine testified that both Detectives told her that “each time they went in there, it was not busy.” Tr. 114. Indeed, Ms. Lawson’s statement to the Detective that she knew the prescription was fraudulent but filled it because she was looking out for her, implicated her in the criminal act of unlawful distribution of a controlled substance. *See* 21 U.S.C. 841(a). This is not the type of conversation that one would expect to occur in a “very busy” pharmacy.

The evidence thus establishes that Ms. Lawson was neither duped into filling the prescription nor harried by the demands of a “very busy” work environment. I thus find that her representations that the Detective was “conniving” by exhibiting “excruciating pain” and that the pharmacy was “very busy” were false.

Ms. Lawson further asserted that her “professional judgment at the time * * * was to inform the police of this occurrence,” and that “to substantiate [her] finding” that the prescription was fraudulent, she “decided to partial[ly] fill [the prescription] so that the police will apprehend the patient with the item in hand.” GX 1, at 3. As the ALJ found, there is no evidence that Ms. Lawson contacted the police on the date in question, February 9, 2000.⁵ Indeed, as recounted in the police report, Ms. Lawson put her telephone on its speaker function so that the Detective could hear, dialed the number for Dr. Ambrozewicz (to show that she knew that there was no such doctor) and stated: “see, I will let you go this time, and I’m not going to call the police because you’re a sister.” GX 14, at 3. I thus find that Ms. Lawson’s representations that it was her judgment “to inform the police” and that she filled the prescription “so that the police [would] apprehend the patient with the item in hand” were both false.

Having found that these various statements were false does not, however, close the inquiry because it must also be determined whether they were material. “The most common formulation” of the concept of materiality “is that a concealment or misrepresentation is material if it ‘has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed.’” *Kungys v. United States*, 485 U.S. 759, 770 (1988) (quoting *Weinstock v. United States*, 231 F.2d 699, 701 (D.C. Cir. 1956)) (other citation omitted); *see also United States v. Wells*, 519 U.S. 482, 489 (1997) (quoting *Kungys*, 485 U.S. at 770). The evidence must be “clear, unequivocal, and convincing.” *Kungys*, 485 U.S. at 772. However, “the ultimate finding of materiality turns on an interpretation of substantive law.” *Id.* at 772 (int. quotations and other citation omitted).

DEA has previously held that “[t]he provision of truthful information on

applications is absolutely essential to effectuating [the] statutory purpose” of determining whether the granting of an application is consistent with the public interest. *See Peter H. Ahles*, 71 FR 50097, 50098 (2006). As the Sixth Circuit recently observed: “Candor during DEA investigations * * * is considered by the DEA to be an important factor when assessing whether a * * * registration is consistent with the public interest.” *Hoxie v. DEA*, 419 F.3d 477, 483 (6th Cir. 2005).

An applicant’s answers to the various liability questions are material because this Agency “relies upon such answers to determine whether an investigation is needed prior to granting the application.” *Martha Hernandez, M.D.*, 62 FR 61145, 61146 (1997). The explanation given by an applicant who has affirmatively answered a liability question is likewise material because the public interest inquiry under section 303(f) requires, *inter alia*, that the Agency examine “[t]he applicant’s experience in dispensing * * * controlled substances,” its “conviction record * * * relating to the * * * dispensing of controlled substances,” and its “[c]ompliance with applicable State, Federal, or local laws relating to controlled substances.” 21 U.S.C. § 823(f). Moreover, even where, as here, an applicant (or its related person) has been convicted of a controlled-substance related offense, that conviction does not impose a *per se* bar to the granting of a new registration. *See, e.g., Scott H. Nearing, D.D.S.*, 70 FR 33200 (2005). Rather, in evaluating such applications, the Agency looks at several factors including the egregiousness of the applicant’s criminal conduct, its mitigating evidence, and whether the applicant has accepted responsibility for its prior criminal conduct. *See id.*; *see also Jackson*, 72 FR at 23853.

While Ms. Lawson’s misrepresentations were somewhat inconsistent in that they depicted her as a victim of a “conniving” customer and the circumstance of a “very busy” store, while then claiming that she filled the prescription so that police could apprehend the customer with the drugs in hand, I conclude that the statements were made to present her criminal conduct as less serious than it actually was. The statements were material because they had “a natural tendency to influence,” or were “capable of influencing” the Agency’s evaluation of several of the public interest factors and the ultimate decision as to whether the Agency should grant Respondent’s

⁵ In discussing this part of Ms. Lawson’s statement, the ALJ also noted that “Detective Muldoon testified to Dr. Lawson’s statement that she partially filled the prescription so that Detective Muldoon would not get in trouble with the police.” ALJ at 19. Detective Muldoon’s statement was, however, in reference to the February 2 and 4, 2000 undercover visits, and not to Ms. Lawson’s criminal conduct on February 9, 2000. Ms. Lawson was indicted for, and convicted of, only her conduct on February 9, 2000; her written statement was offered only in explanation of the events pertaining to her conviction. Detective Muldoon’s statements are therefore not probative of the events occurring on this date. Accordingly, I reject the ALJ’s reasoning to the extent it relied on the statement to Detective Muldoon in finding that Ms. Lawson’s statement was false.

application.⁶ *Kungys*, 485 U.S. at 770 (internal quotations and other citations omitted).

That the Agency did not rely on Ms. Lawson's false statements and grant Respondent's application does not make the statements immaterial. As the First Circuit has noted with respect to the material falsification requirement under 18 U.S.C. § 1001, "[i]t makes no difference that a specific falsification did not exert influence so long as it had the capacity to do so." *United States v. Alemany Rivera*, 781 F.2d 229, 234 (1st Cir. 1985). See also *United States v. Norris*, 749 F.2d 1116, 1121 (4th Cir. 1984) ("There is no requirement that the false statement influence or effect the decision making process of a department of the United States Government.").

I further conclude that Ms. Lawson's material falsifications cannot be attributed to mere negligence or carelessness, and that she either "knew or should have known" that the statements were false. *Dan E. Hale, D.O.*, 69 FR 69402, 69406 (2004); *The Drugstore*, 61 FR 5031, 5032 (1996). The circumstances surrounding the February 9, 2000 visit, in which Ms. Lawson indicated that she knew the prescription was fraudulent and proceeded to dial the phone number of Dr. Ambrozewicz to demonstrate to the Detective that she knew that the doctor did not exist, are sufficiently different from the typical filling of a prescription that one should accurately recall them. Furthermore, the experience of being indicted and pleading guilty in a federal district court to the unlawful distribution of Percocet on the above date are of such significance that one should have a fairly accurate recollection of the underlying circumstances. Moreover, only three and a half years had elapsed between her criminal conduct in filling the fraudulent prescription and her

submission of the statement.

Significantly, Respondent provided the statement to DEA after the rejection of an earlier application.

I further note that Ms. Lawson did not testify regarding the circumstances surrounding the preparation of the statement. Ms. Lawson's failure to testify on the issue supports an adverse inference that she knew the statements were false. See *William M. Knarr*, 51 FR 2772, 2773 (1986). Cf. *Baxter v. Palmigiano*, 425 U.S. 308, 319 (1976). Both the circumstantial evidence and Ms. Lawson's silence thus support the conclusion that she knowingly made false statements in an attempt to obtain a favorable decision from the Agency on Respondent's application.

I recognize that the ALJ found that Ms. Lawson credibly acknowledged "that she made mistakes" and expressed "remorse for those mistakes." ALJ Dec. at 19–20. But because Ms. Lawson did not address the issues surrounding the material falsification of her statement, the ALJ's findings are relevant only with respect to the issues related to Respondent's dispensing of controlled substances to the two Detectives.

Because Ms. Lawson failed to offer any explanation as to why she submitted her statement, I further conclude that she has not accepted responsibility and expressed remorse for the separate act of misconduct that she committed in submitting her written statement. Her failure to do so precludes a finding that granting Respondent a new registration would be consistent with the public interest.

Order

Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of The Lawsons, Inc., t/a The Medicine Shoppe Pharmacy, for a DEA Certification of Registration as a pharmacy, be, and it hereby is, denied. This order is effective January 30, 2008.

Dated: December 13, 2007.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E7–25346 Filed 12–28–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 17, 2007.

The Department of Labor (DOL) hereby announces the submission the following public information collection

requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: king.darrin@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Carolyn Lovett, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/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**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Request for Information on Earnings, Dual Benefits, Dependents and Third Part Settlements.

OMB Control Number: 1215–0151.

Agency Form Number: CA–1032.

Estimated Number of Annual Respondents: 50,000.

⁶ My decision in *Jackson* is not to the contrary. In *Jackson*, I found that the respondent provided a factually accurate disclosure of his conviction; this act thus rendered immaterial the respondent's "no" answer to question of whether he had been convicted of a controlled substance offense. 72 FR at 23852–53. Similarly, respondent's statement that he had voluntarily surrendered his registration when it had actually been revoked was not consequential in light of fact that no regulation defines the difference between the terms and the respondent had provided an accurate disclosure of the conduct that led to the loss of his registration. *Id.* In addition, I also adopted the ALJ's finding that the respondent had not intentionally falsified his application. *Id.* at 23852.

⁷ The fact that a DEA Diversion Investigator from a local field office may have been present when Ms. Lawson entered her plea, Tr. 174, also does not render her representations immaterial. As the ALJ found, Respondent's application was submitted to a different section of the Agency, ALJ at 11, where it was initially reviewed.

Estimated Total Annual Burden Hours: 16,667.

Total Estimated Annual Cost Burden: \$22,000.

Affected Public: Individuals or households.

Description: In accordance with 20 CFR 10.528, DOL periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until DOL receives the requested report.

The information collected through the Form CA-1032 is used to ensure that compensation being paid is correct. Without this information, claimants might receive compensation to which they were not entitled, resulting in an overpayment of compensation. For additional information, see related notice published on August 29, 2007 at 72 FR 49737.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Worker Information—Terms and Conditions of Employment.

OMB Control Number: 1215-0187.

Agency Form Numbers: WH-516 and WH-516-Espanol.

Estimated Number of Annual

Respondents: 129,250.

Estimated Total Annual Burden Hours: 77,550.

Total Estimated Annual Cost Burden: \$93,060.

Affected Public: Private Sector: Farms.

Description: Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 et seq., require respondents [i.e., Farm Labor Contractors (FLCs), Agricultural Employers (AGERS), and Agricultural Associations (AGASs)] to disclose employment terms and conditions in writing to: (1) Migrant agricultural workers at the time of recruitment [MSPA section 201(a)]; (2) seasonal agricultural workers, upon request, at the time an offer of employment is made [MSPA section 301(a)(1)]; and (3) seasonal agricultural workers employed through a day-haul operation at the place of recruitment [MSPA section 301(a)(2)]. See 29 CFR 500.75-.76. Moreover, MSPA sections 201(b) and 301(b) require respondents to provide each migrant worker, upon request, with a written statement of the

terms and conditions of employment. See 29 CFR 500.75(d). MSPA sections 201(g) and 301(f) require providing such information in English or, as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. The DOL prints and makes Optional Form WH-516, Worker Information—Terms and Conditions of Employment, available for these purposes. See 29 CFR 500.75(a), 500.76(a).

MSPA sections 201(a)(8) and 301(a)(1)(H) require disclosure of certain information regarding whether State workers' compensation or state unemployment insurance is provided to each migrant or seasonal agricultural worker. See 29 CFR 500.75(b)(6). For example, if State workers' compensation is provided, the respondents must disclose the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. See 29 CFR 500.75(b)(6)(i). Respondents may also meet this disclosure requirement, by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed. See 29 CFR 500.75(b)(6)(ii).

The Form WH-516 is an optional form that allows respondents to disclose employment terms and conditions in writing to migrant and seasonal agricultural workers, as required by the MSPA. Respondents may either complete the optional form and use it to make the required disclosures to workers or use the form as a written reflection of the information workers may request from employers under the MSPA. Disclosure of the information on this form is beneficial to both parties in that it enables workers to understand their employment terms and conditions, while also providing respondents with an easy way to disclose the information required by the MSPA and its regulations. For additional information, see related notice published on September 12, 2007 at 72 FR 52166.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7-25371 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,517]

Advanced Electronics, Inc., Boston, MA; Notice of Negative Determination on Remand

On October 22, 2007, the U.S. Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Advanced Electronics, Inc. v. United States Secretary of Labor* (Court No. 06-00337).

On July 18, 2006, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Advanced Electronics, Inc., Boston, Massachusetts (subject firm). AR 60. The Department's Notice of determination was published in the **Federal Register** on August 4, 2006 (71 FR 44320). AR 67.

The petition identified the article produced by the subject workers as "electronics." AR 2. A letter (dated May 8, 2006) identified the subject workers as engaged in the production of "subassembly" printed circuit boards" and alleged that increased imports of that article caused the subject workers' separations. AR 28.

The negative determination stated that the subject workers "were engaged in the production of printed circuit boards (subassembly)" and that the Department's investigation revealed that "the subject firm did not import printed circuit boards" and did not transfer production abroad during the relevant period. The Department's survey of the subject firm's major declining customers regarding their purchases in 2004, 2005, January through May 2005, and January through May 2006 of "printed circuit board (assembly)" revealed no imports during the period under investigation, and that a portion of the decline in company sales is attributed to declining purchases from a foreign customer during the period under investigation. AR 61.

Administrative reconsideration was not requested by any of the parties pursuant to 29 CFR section 90.18.

The Department requested voluntary remand to determine whether, during the relevant period, any of the foreign customer's facilities located in the United States received printed circuit boards produced by the subject firm

and, if so, whether the facility(s) had imported articles like or directly competitive with the printed circuit board assemblies produced by the subject firm.

During the remand investigation, the Department contacted the former subject firm official who completed the Business Confidential Data Request form, SAR 1–5, and the former subject firm employee who handled the foreign customer's contract for information about where the articles were shipped. SAR 7. The Department confirmed that the subject firm sent the articles purchased by the foreign customer to a facility located outside of the United States and obtained the foreign address to where the articles were shipped. SAR 3, 5, 7.

Because the subject firm did not send printed circuit boards to a domestic facility of the foreign customer, the Department determines that the foreign customer did not import articles like or directly competitive with the printed circuit boards produced by the subject firm, and affirms the negative determination.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Advanced Electronics, Inc., Boston, Massachusetts.

Signed at Washington, DC, this 19th day of December, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–25362 Filed 12–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,364; TA–W–62,364A]

Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts; Including an Employee of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts, Located in Cumberland Furnace, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on November 14, 2007, applicable to workers of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts. The notice was published in the **Federal Register** on December 10, 2007 (72 FR 69710).

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that worker separation has occurred involving an employee of the Bedford, Massachusetts facility of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., working out of Cumberland Furnace, Tennessee. Mr. Edward C. Butcher performed support duties for the firm's Bedford, Massachusetts, software development, testing, and monitoring.

Based on these findings, the Department is amending this certification to include an employee of the Bedford, Massachusetts facility of Cellular Express, Inc., d/b/a Boston Communications Group, Inc. working out of Cumberland Furnace, Tennessee.

The intent of the Department's certification is to include all workers of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts, who were adversely affected by increased imports following a shift in production to India.

The amended notice applicable to TA–W–62,364 is hereby issued as follows:

“All workers of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts (TA–W–62,364), including an employee of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts located in Cumberland Furnace, Tennessee (TA–W–62,364A), who became totally or partially separated from employment on or after October 25, 2006, through November 14, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.”

I further determine that workers of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts (TA–W–62,364), including an employee of Cellular Express, Inc., d/b/a Boston Communications Group, Inc., Bedford, Massachusetts, located in Cumberland Furnace, Tennessee (TA–W–62,364A), are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–25358 Filed 12–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,310]

Healthcare Management Partners, LLC, Santa Ana, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked November 20, 2007, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on October 23, 2007 and published in the **Federal Register** on November 6, 2007 (72 FR 62682). Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or

of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Healthcare Management Partners, LLC, Santa Ana, California, was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974. The investigation revealed that workers of the subject firm are engaged in medical billing and medical practice management. The investigation further revealed that no production of article(s) occurred within the firm or appropriate subdivision within the Healthcare Management Partners, LLC during the relevant time period.

The petitioner contends that the Department erred in its interpretation of the work performed by the workers of the subject firm. The petitioner states that the workers of the subject firm "produced medical coding, appeals on claims, resubmitted claims, bills, medical records and other documents for patients, insurance companies, or other third parties." The petitioner alleges that because the work was done in a "production environment in which workers submitted weekly reports" and because the written documents and codes should be considered "intangible products", workers of the subject firm should be considered as engaged in production of articles.

The investigation revealed that Healthcare Management Partners, LLC, Santa Ana, California, provide medical billing and practice management services to physicians and medical professional practices and the workers were engaged in data processing, payment posting, following up on accounts receivable for the company's medical billing clients. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act. Claims, medical records, bills and other correspondence are documents used by the subject firm as incidental to services provided by the subject firm. No production took place at the subject facility nor did the workers support production of an article for at any domestic affiliated location during the relevant period.

The petitioner also alleges that job functions have been shifted from the subject firm to overseas contractors.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of Healthcare Management Partners, LLC, Santa Ana, California, do not produce

an article within the meaning of Section 222 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 18th day of December, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7-25365 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of *December 10 through December 14, 2007*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment

Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA-W-62,465; *Hyper Knits Sales, Inc., A Subsidiary of Safer Holding Group, New York, NY: November 13, 2006.*

TA-W-62,084; *Weldsource Alliance, Inc., Oskosh, WI: August 31, 2006.*

TA-W-61,934; *Maxtex Fibre Recycling, Inc.; Eden Plant, Eden, NY: August 2, 2006.*

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA-W-62,431; *Bierner Hat Company; Div. of F&M Hat Company, Dallas, TX: August 18, 2007.*

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section

222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,465A; *Hyper Knits Sales, Inc.; A Subsidiary of Safer Holding Group, Commerce, CA: November 13, 2006.*

TA-W-62,475; *Derma Sciences; Formerly Nutramax, First Aid Division, Houston, TX: November 14, 2006.*

TA-W-62,546; *Remy Reman LLC; Raleigh, MS: December 6, 2006.*

TA-W-62,097; *Elliott Brother Steel; New Castle, PA: September 14, 2006.*

TA-W-62,198; *Shorewood Packaging Corp., Consumer Packaging Division, On-Site Leased Worker From Talent Tree, Waterbury, CT: September 24, 2006.*

TA-W-62,327; *Coshocton Leasing Company LLC; d/b/a Pretty Products, LLC, Pretty Products, Inc., Coshocton, OH: October 17, 2006.*

TA-W-62,362; *MW Custom Papers, LLC; Laurel Mill, A Subsidiary of Meadwestvaco Corp., South Lee, MA: October 24, 2006.*

TA-W-62,384; *Energy Conversion Systems; Dunn, NC: October 29, 2006.*

TA-W-62,402; *Alma Products; Automotive Air-Conditioner Compressors, Alma, MI: October 25, 2006.*

TA-W-62,552; *Hayes Lemmerz; Technical Center, Ferndale, MI: December 6, 2006.*

TA-W-62,240; *Toluca Garment Company; Toluca, IL: September 21, 2006.*

TA-W-62,438; *Chrysler LLC; St. Louis South Assembly Div., Fenton, MO: November 7, 2006.*

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,338; *Wireco Worldgroup, Inc., formerly know as Wire Rope Corporation of America, St. Joseph, MO: October 17, 2006.*

TA-W-62,401; *Victor Forstmann, Inc., East Dublin, GA: July 27, 2007.*

TA-W-62,408; *PQ Corporation; Anderson Plant, Anderson, IN: November 5, 2006.*

TA-W-62,409; *Stanric, Inc., Engine Management Division, Fajardo, PR: November 1, 2006.*

TA-W-62,427; *UNI-Cadillac, LLC; Division of Universal Trim, Inc., Cadillac, MI: November 6, 2006.*

TA-W-62,460; *Amweld Building Products; Garrettsville Facility, Garrettsville, OH: November 2, 2006.*

TA-W-62,460A; *Amweld Building Products; Niles Facility, Niles, OH: November 2, 2006.*

TA-W-62,503; *Black and Decker Abrasives, Inc., On-Site Leased Workers from Willstaff, Marshall, TX: November 26, 2006.*

TA-W-62,513; *SE-GI Products, Inc.; Including Westaff, Norco, CA: November 28, 2006.*

TA-W-62,042; *Tecumseh Power Company; Grafton, WI: August 22, 2006.*

TA-W-62,282; *National Starch and Chemical Company; Specialty Starches Div., Island Falls, ME: October 5, 2006.*

TA-W-62,431; *Bierner Hat Company; Div. of F&M Hat Company, Dallas, TX: August 18, 2007.*

TA-W-62,492; *Thule Towing Systems; d/b/a Titan, Wyandotte, MI: November 21, 2006.*

TA-W-62,496; *GE Lighting Systems, Inc., Die Cast Department, Spherion, East Flat Rock, NC: November 20, 2006.*

TA-W-62,496A; *GE Lighting Systems, Inc., Sheet Metal Department, East Flat Rock, NC: November 20, 2006.*

TA-W-62,496B; *GE Lighting Systems, Inc., Ballast Department, East Flat Rock, NC: November 20, 2006.*

TA-W-62,496C; *GE Lighting Systems, Inc., NATCO Department, East Flat Rock, NC: November 20, 2006.*

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,086; *Prelude Foam Products, Inc., Leased On-Site Workers from Ablest and Temporary Staffing, Thomasville, NC: August 31, 2006.*

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,430; *Pageland Screen Printers; Pageland, SC: November 6, 2006.*

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a

significant number of workers 50 years of age or older.

TA-W-62,465; *Hyper Knits Sales, Inc., A Subsidiary of Safer Holding Group, New York, NY.*

TA-W-62,084; *Weldsource Alliance, Inc., OskKosh, WI.*

TA-W-61,934; *Maxtex Fibre Recycling, Inc., Eden Plant, Eden, NY.*

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA-W-62,431; *Bierner Hat Company; Div. of F&M Hat Company, Dallas, TX.*

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA-W-62,260; *Flexsteel Industries, Inc., Dubuque, IA.*

TA-W-62,343; *Parametric Technology Corporation, Arden Hills Division, Arden Hills, MN.*

TA-W-62,464; *Engineered Plastic Components, Rantoul, IL.*

TA-W-62,507; *Chester Bednar Rental Realty; Washington, PA.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-62,453; *BASF Corporation; Enka, NC.*

TA-W-62,471; *AGY; Huntingdon, PA.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-61,963; *PennTecQ, Inc., Greenville, PA.*

TA-W-62,003; *Custom Tooling Systems, Inc., Zeeland, MI.*

TA-W-62,071; *Bedford Fair Apparel; A Division of Charming Shoppes, Inc., Greenwich, CT.*

TA-W-62,441; *Hitachi Global Storage Technology, San Jose, CA.*

TA-W-62,334; *Mammoth, Inc., A Subsidiary of Nortek, Inc., Chaska, MN.*

TA-W-62,389; *Peer Foods Group, Inc., On-Site Leased Workers of Personnel Management, Chicago, IL.*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-62,339; *Teleplan Wireless Services, Chanhassen, MN.*

TA-W-62,385; *Windstream Communications, Inc., Broadband Customer Care Center, Lincoln, NE.*

TA-W-62,424; *Tanner Companies LLC; Rutherfordton, NC.*

TA-W-62,444; *Poirier's Inc., Fall River, MA.*

TA-W-62,469; *Springs Global, US, Inc., Springs Direct Division, Corporate Support Group, Lancaster, SC.*

TA-W-62,469A; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Albertville, MN.*

TA-W-62,469AA; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Lincoln City, OR.*

TA-W-62,469B; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Asheville, NC.*

TA-W-62,469BB; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Locust Grove, GA.*

TA-W-62,469C; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Batesville, MS.*

TA-W-62,469CC; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Loveland, CO.*

TA-W-62,469D; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Bend, OR.*

TA-W-62,469DD; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Myrtle Beach, SC.*

TA-W-62,469E; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Birch Run, MI.*

TA-W-62,469EE; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Opelika, AL.*

TA-W-62,469F; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Boise, ID.*

TA-W-62,469FF; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Osage Beach, MO.*

TA-W-62,469G; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Branson, MO.*

TA-W-62,469GG; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Pigeon Forge, TN.*

TA-W-62,469H; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Burbank, OH.*

TA-W-62,469HH; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Queenstown, MD.*

TA-W-62,469I; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Calhoun, GA.*

TA-W-62,469II; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Rehoboth Beach, DE.*

TA-W-62,469J; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Castle Rock, CO.*

TA-W-62,469JJ; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Rockvale, PA.*

TA-W-62,469K; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Commerce, GA.*

TA-W-62,469KK; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Rockvale, PA.*

TA-W-62,469L; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Conroe, TX.*

TA-W-62,469LL; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, San Marcos, TX.*

TA-W-62,469M; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Darien, GA.*

TA-W-62,469MM; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, North Conway, NH.*

TA-W-62,469N; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Ellenton, FL.*

TA-W-62,469NN; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Tannersville, PA.*

TA-W-62,469O; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Gaffney, SC.*

TA-W-62,469OO; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Tilton, NH.*

TA-W-62,469P; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Gainesville, TX.*

TA-W-62,469PP; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Vero Beach, FL.*

TA-W-62,469Q; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Gilroy, CA.*

TA-W-62,469QQ; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Waterloo, NY.*

TA-W-62,469R; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Grove City, PA.*

TA-W-62,469RR; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Westbrook, CT.*

TA-W-62,469S; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Gulfport, MS.*

TA-W-62,469T; *Springs Global, US, Inc., Springmaid Wamsutta Factory Store Division, Hagerstown, MD.*

TA-W-62,469U; Springs Global, US,
Inc., Springmaid Wamsutta Factory
Store Division, Hershey, PA.

TA-W-62,469V; Springs Global, US,
Inc., Springmaid Wamsutta Factory
Store Division, Hillsboro, TX.

TA-W-62,469W; Springs Global, US,
Inc., Springmaid Wamsutta Factory
Store Division, Jeffersonville, OH.

TA-W-62,469X; Springs Global, US,
Inc., Springmaid Wamsutta Factory
Store Division, Johnson Creek, WI.

TA-W-62,469Y; Springs Global, US,
Inc., Springmaid Wamsutta Factory
Store Division, Lancaster, SC.

TA-W-62,469Z; Springs Global, US,
Inc., Springmaid Wamsutta Factory
Store Division, Las Vegas, NV.

TA-W-62,497; H & W Trucking Co.,
Inc., Mount Airy, NC.

TA-W-62,526; Bulk Bag Express, Inc.,
Malvern, AR.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA. None.

I hereby certify that the aforementioned determinations were issued during the period of December 10 through December 14, 2007. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution

Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 21, 2007.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E7-25361 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 10, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 10, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of December 2007.

Ralph DiBattista,

*Director, Division of Trade Adjustment
Assistance.*

APPENDIX

[TAA petitions instituted between 12/11/07 and 12/14/07]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62547	Lighting Products, Inc. (IUECWA)	Hubbard, OH	12/11/07	12/06/07
62548	Kaso Plastics (Wkrs)	Vancouver, WA	12/11/07	12/03/07
62549	Thermo Fisher Scientific (UBCJA)	Two Rivers, WI	12/11/07	12/10/07
62550	Nelson Staffing (State)	Redwood City, CA	12/11/07	12/07/07
62551	Lenovo (Wkrs)	Belleve, WA	12/11/07	11/30/07
62552	Hayes Lemmerz (State)	Ferndale, MI	12/11/07	12/06/07
62553	A.L.A Casting Company, Inc. (Wkrs)	Long Island City, NY	12/11/07	11/27/07
62554	MI Windows and Doors, Inc. (Comp)	Millen, GA	12/11/07	12/10/07
62555	Carson's Furniture (Wkrs)	Archdale, NC	12/11/07	12/10/07
62556	Magneti Marelli North America, Inc. (NA) (Comp)	Kingsport, TN	12/12/07	12/11/07
62557	Sports Belle, Inc. (Comp)	Knoxville, TN	12/12/07	12/06/07
62558	HSBC (State)	Fort Mill, SC	12/12/07	12/11/07
62559	Hyde Tools, Inc. (Comp)	Southbridge, MA	12/12/07	12/10/07
62560	Motorola, Inc. (State)	Schaumburg, IL	12/12/07	12/10/07
62561	B & G International, Inc. (State)	Newark, NJ	12/12/07	12/10/07
62562	Innovision Technologies, Inc. (State)	Novi, MI	12/12/07	12/06/07
62563	Graham Packaging Company, L.P. (Comp)	Oakdale, CA	12/12/07	12/11/07
62564	Holt Sublimation Printing and Products, Inc. (Comp)	Burlington, NC	12/12/07	12/11/07
62565	Glen Raven (Wkrs)	Elberton, GA	12/12/07	12/05/07
62566	WestPoint Home (Comp)	Valley, AL	12/12/07	12/10/07
62567	Alcatel-Lucent (Union)	North Andover, MA	12/12/07	12/10/07
62568	IBM (Wkrs)	Lexington, KY	12/12/07	12/05/07
62569	New York Air Brake (Comp)	Watertown, NY	12/12/07	12/06/07
62570	Umpqua Lumber Company (Comp)	Dillard, OR	12/13/07	12/10/07
62571	France Scott Fetzer Company (Wkrs)	Fairview, TN	12/13/07	12/10/07
62572	Ethicon, Johnson and Johnson (UFCWIU)	San Angelo, TX	12/13/07	12/12/07
62573	Lexmark International, Inc. (State)	Lexington, KY	12/13/07	12/13/07
62574	Molex, Inc. (State)	Maumelle, AR	12/14/07	12/13/07
62575	Norgren, Inc. (Comp)	Littleton, CO	12/14/07	12/13/07
62576	U.S. Pipe and Foundry (State)	Burlington, NJ	12/14/07	12/13/07

[FR Doc. E7-25359 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration****Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

TA-W-60,252

Shogren Hosiery Manufacturing Co.,
Inc. Including Leased Workers of
Corestaff, Concord, North Carolina

Including Employees of Shogren
Hosiery Manufacturing Co., Inc.,
Concord, North Carolina Located at the
Following Locations

TA-W-60,252A; Plano, Texas
TA-W-60,252B; Freehold, New Jersey
TA-W-60,252C; Hope Sound, Florida
TA-W-60,252D; Boca Raton, Florida
TA-W-60,252E; Bentonville, Arkansas

In accordance with Section 223 of the
Trade Act of 1974 (19 U.S.C. 2273), and
Section 246 of the Trade Act of 1974 (26
U.S.C. 2813), as amended, the
Department of Labor issued a
Certification Regarding Eligibility to
Apply for Worker Adjustment
Assistance and Alternative Trade
Adjustment Assistance on November 16,
2006, applicable to workers of Shogren
Hosiery Manufacturing Co., Inc.,
including leased workers of Corestaff,
Concord, North Carolina. The notice
was published soon in the **Federal
Register** on November 28, 2006 (71 FR
68840).

At the request of a company official,
the Department reviewed the
certification for workers of the subject
firm.

New information shows that worker
separations have occurred involving
employees of the Concord, North
Carolina facility of Shogren Hosiery
Manufacturing Co., Inc. working out of
Plano, Texas, Freehold, New Jersey,
Hope Sound, Florida, Boca Raton,
Florida and Bentonville, Arkansas.
These employees provided customer
liaison and sales functions in support of
the production of women's hosiery and
tights produced at the Concord, North
Carolina location of the subject firm.

Based on these findings, the
Department is amending this
certification to include employees of the
Concord, North Carolina facility of
Shogren Hosiery Manufacturing Co.,
Inc. working out of the above mentioned
locations.

The intent of the Department's
certification is to include all workers of

Shogren Hosiery Manufacturing Co.,
Inc., Concord, North Carolina who were
adversely affected by increased imports.

The amended notice applicable to
TA-W-60,252 is hereby issued as
follows:

"All workers of Shogren Hosiery
Manufacturing Co., Inc., including leased
workers of Corestaff, Concord, North Carolina
(TA-W-60,252), including employees of
Shogren Hosiery Manufacturing Co., Inc.,
Concord, North Carolina located in Plano,
Texas (TA-W-60,252A), Freehold, New
Jersey (TA-W-60,252B), Hope Sound,
Florida (TA-W-60,252C), Boca Raton,
Florida (TA-W-60,252D) and Bentonville,
Arkansas (TA-W-60,252E), who became
totally or partially separated from
employment on or after October 17, 2005,
through November 16, 2008, are eligible to
apply for adjustment assistance under
Section 223 of the Trade Act of 1974, and are
also eligible to apply for alternative trade
adjustment assistance under Section 246 of
the Trade Act of 1974."

Signed at Washington, DC, this 14th day of
December 2007.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E7-25363 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-60,541]

**Siemens VDO Automotive Corporation,
Formerly Known as American
Electronic Corporation, a Subsidiary of
Siemens AG, Sensors Division—
Elkhart Facility, Now Known as
Continental AG, Elkhart, Indiana;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

In accordance with Section 223 of the
Trade Act of 1974 (19 U.S.C. 2273), and
Section 246 of the Trade Act of 1974 (26
U.S.C. 2813), as amended, the
Department of Labor issued a
Certification Regarding Eligibility to
Apply for Worker Adjustment
Assistance and Alternative Trade
Adjustment Assistance on December 19,
2006, applicable to workers of Siemens
VDO Automotive Corporation, formerly
known as American Electronic Corp., a
subsidiary of Siemens AG, Sensors
Div.—Elkhart Facility, Elkhart, Indiana.
The notice was published in the **Federal
Register** on January 16, 2007 (72 FR
1770).

At the request of International
Brotherhood of Teamsters (IBT), Local

364, the Department reviewed the
certification for workers of the subject
firm. The workers were engaged in the
production of electronic sensor devices
for automobiles.

New information shows that
following a change in ownership,
Siemens VDO Automotive Corporation,
formerly known as American Electronic
Corporation, a subsidiary of Siemens
AG, Sensors Division—Elkhart Facility,
is now known as Continental AG.

Workers separated from employment
at the subject firm had their wages
reported under a separate
unemployment insurance (UI) tax
account for Continental AG.

Accordingly, the Department is
amending this certification to properly
reflect this matter.

The intent of the Department's
certification is to include all workers of
Siemens VDO Automotive Corporation,
formerly known as American Electronic
Corporation, a subsidiary of Siemens
AG, Sensors Division—Elkhart Facility,
now known as Continental AG, who
were adversely affected by a shift in
production of electronic sensor devices
for automobiles to Mexico.

The amended notice applicable to
TA-W-60,541 is hereby issued as
follows:

"All workers of Siemens VDO Automotive
Corporation, formerly known as American
Electronics Corporation, a subsidiary of
Siemens AG, Sensors Division—Elkhart
Facility, now known as Continental AG,
Elkhart, Indiana, who became totally or
partially separated from employment on or
after December 4, 2005, through December
19, 2008, are eligible to apply for adjustment
assistance under Section 223 of the Trade Act
of 1974, and are also eligible to apply for
alternative trade adjustment assistance under
Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 20th day of
December 2007.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E7-25364 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration****Investigations Regarding Certifications
of Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

Petitions have been filed with the
Secretary of Labor under Section 221(a)
of the Trade Act of 1974 ("the Act") and
are identified in the Appendix to this
notice. Upon receipt of these petitions,

the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 10, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 10, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/17/07 and 12/21/07]

TA-W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
62577	Warnaco Group (Wkrs)	Los Angeles, CA	12/17/07	12/13/07
62578	Safety Light Corporation (Comp)	Bloomsburg, PA	12/17/07	12/10/07
62579	Durham Manufacturing Company (State)	Durham, CT	12/17/07	12/14/07
62580	Belden CDT Networking, Inc. dba Mohawk (State)	Manchester, CT	12/18/07	12/17/07
62581	ADA Metal Products, Inc. (Comp)	Lincolnwood, IL	12/18/07	12/17/07
62582	Smurfit Stone (Wkrs)	El Paso, TX	12/18/07	12/11/07
62583	Peoploungers (Wkrs)	Nettleton, MS	12/18/07	12/18/07
62584	General Dynamics (Union)	Scranton, PA	12/18/07	12/14/07
62585	New NY Fashion, Inc. (Wkrs)	New York, NY	12/18/07	12/07/07
62586	Tennplasco Mark (State)	Lafayette, TN	12/18/07	12/17/07
62587	Deluxe Media Services LLC (Comp)	Vernon Hills, IL	12/18/07	12/16/07
62588	Rad Technologies (State)	North Reading, MA	12/18/07	12/13/07
62589	Hubbard Supply Company (State)	Flint, MI	12/19/07	12/18/07
62590	Imation Corporation (State)	Oakdale, MN	12/19/07	12/18/07
62591	Miss Elaine, Inc. (UNITE)	St. Louis, MO	12/20/07	12/18/07
62592	J.H.L. Fashion, Inc. (Wkrs)	New York, NY	12/20/07	12/19/07
62593	Cudahy Tanning Company Inc. (Comp)	Cudahy, WI	12/20/07	12/19/07
62594	Hallmark Cards Inc. (Wkrs)	Kansas City, MO	12/20/07	12/19/07
62595	Cisco Systems Inc. (Wkrs)	Petaluma, CA	12/20/07	12/07/07
62596	First Inertia Switch Ltd. (Rep)	Grand Blanc, MI	12/20/07	12/19/07
62597	Parma Corporation (Comp)	Denton, NC	12/20/07	12/19/07
62598	Matthew Cole, Inc. (Comp)	Philadelphia, PA	12/21/07	12/21/07
62599	J.C. Matthews and Co., Inc. (Comp)	Galax, VA	12/21/07	07/14/07
62600	OSRAM Sylvania Products Inc. (Comp)	Waldoboro, ME	12/21/07	12/19/07

[FR Doc. E7-25360 Filed 12-28-07; 8:45 am]

BILLING CODE 4510-FN-P

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Programs and Plans; Sunshine Act; Notice

The National Science Board's Committee on Programs and Plans, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Thursday, January 10, 2008, 11 a.m.

SUBJECT MATTER: Recommendations from the Committee on Programs and Plans to the Board for responding to Congress regarding facilities operations and maintenance costs.

STATUS: Open.

PLACE: This teleconference will originate at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A room will be available to the public to listen to this teleconference but visitors must report to the NSF reception desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Please check with the reception desk for the room number.

Please refer to the National Science Board Web site (<http://www.nsf.gov/nsb>) for information or schedule updates, or contact: Dr. Robert Webber, National Science Board Office, 4201 Wilson

Bld., Arlington, VA 22230. Telephone: (703) 292-7000.

Russell Moy,

Attorney-Advisor.

[FR Doc. E7-25308 Filed 12-28-07; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[IA-07-048]

In the Matter of Cary W. Hedger; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Cary W. Hedger was employed as the Operations Manager and Assistant Radiation Safety Officer (RSO) at Alpha Omega Services, Inc. (AOS) in January

2003. Currently, Mr. Hedger is the RSO, President, and an owner of AOS. In January 2003, AOS was the holder of a U.S. Nuclear Regulatory Commission (NRC or Commission) Certificate of Compliance (CoC) No. 5979, Revision 10, for the Model No. 5979 package (NRC Docket Number 71-5979) issued by the NRC, and an NRC-approved Quality Assurance (QA) Program Approval holder (NRC Docket Number 71-0086) pursuant to Part 71 of Title 10 of the Code of Federal Regulations (10 CFR). The CoC authorized use of the Model No. 5979 package under the general license provisions of 10 CFR 71.12 [currently 10 CFR 71.17]. The QA Program Approval satisfied the requirements of 10 CFR 71.12(b) [currently 10 CFR 71.17(b)], and 10 CFR 71.101(c) [currently 10 CFR 71.101(c)(1)] by authorizing activities be conducted under criteria of Subpart H of 10 CFR Part 71, "Quality Assurance."

II

On November 18, 2004, an NRC inspection was conducted at the AOS facility. During that inspection, certain nonconformances regarding a shipping package, serial number 1B, CoC No. 5979, Model No. 5979, were brought to the NRC's attention. Subsequently, concerns about the nonconformances led to an investigation by the NRC's Office of Investigation.

Based on the investigation and Mr. Hedger's presentation at a November 8, 2007, pre-decisional enforcement conference, the NRC has concluded that Mr. Hedger engaged in two examples of deliberate misconduct in violation of 10 CFR 71.8, "Deliberate misconduct."

First, Cary W. Hedger deliberately provided materially inaccurate information to an NRC licensee and to a contractor to the licensee. Specifically, in January 2003, Mr. Hedger performed a maintenance inspection of a Model 5979 shipping package, serial number 1B, NRC Certificate of Compliance (CoC) No. 5979, and certified that the package conformed to CoC No. 5979, Revision 10. Mr. Hedger purposely indicated on the maintenance inspection checklist that the cask end caps conformed to the CoC when he knew they did not. The cask end caps did not conform to the drawings in the CoC because they were physically (weight and materials) and dimensionally (end cap thickness and length of bolts) different from the approved end cap designs. AOS then returned the package to its owner, Foss Therapy Services (FTS), along with the inaccurate maintenance inspection checklist. SPEC was an NRC licensee pursuant to 10 CFR Part 110, and a CoC and QA Program Approval holder under

10 CFR Part 71. FTS subsequently provided the package to Source Production and Equipment Company (SPEC) for export of licensed radioactive material on FTS's behalf. AOS specifically provided the inaccurate maintenance inspection checklist to FTS by, at minimum, giving it to an official of FTS, who in his capacity as a contractor to SPEC performed inspections of packages exported by SPEC. When performing pre-shipment inspections of the subject FTS package for SPEC, the contractor relied on the inaccurate checklist, instead of comparing the package to the drawings in CoC No. 5979, to certify that the package met all federal requirements. The contractor also supplied the inaccurate maintenance inspection checklist to SPEC. The inaccurate checklist was material to the NRC because it concealed the fact that the package did not comply with CoC No. 5979.

Second, Cary W. Hedger deliberately caused an NRC licensee to violate NRC requirements. SPEC made at least three export shipments of licensed radioactive material between July 2003 and May 2004, when the Model No. 5979 package was in a nonconforming condition. SPEC relied upon its contractor's certification that the package met all federal requirements, and upon the inaccurate maintenance inspection checklist created by Mr. Hedger. Because SPEC used the nonconforming package to deliver for transport and to transport licensed material, and pursuant to 10 CFR 71.17(c)(2) [formerly 71.12(c)(2)], "General license: NRC-approved package," SPEC did not have a license to deliver for transport or to transport licensed material. As a result, SPEC violated 10 CFR 71.3, "Requirement for license," which provides that a license is necessary to deliver for transport or to transport licensed material.

III

Based on the above, it appears that Cary W. Hedger has engaged in deliberate misconduct in violation of 10 CFR 71.8, "Deliberate misconduct." The NRC must be able to rely on the certificate and QA Program Approval holder and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Hedger's actions in causing SPEC, an NRC Licensee, to violate 10 CFR 71.3, and his misrepresentations to SPEC, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

While the NRC is not aware of actual safety consequences associated with the shipments, the potential safety consequences were significant, considering the potential adverse impact of shipping radioactive materials in an unapproved package design that had not been demonstrated to meet the transportation package approval standards for both normal and hypothetical accident conditions as required by 10 CFR part 71. Of the many controls that are in place to assure public health and safety during the transport of radioactive materials, one of the most important is that the configuration of the package conforms to that analyzed and approved by the NRC staff, through the package CoC process, so as to assure integrity of the package during transportation for both normal and hypothetical accident conditions. In this case, the package integrity is of particular safety concern given the quantities of licensed radioactive material that were transported between July 2003 and May 2004.

Consequently, I lack the requisite reasonable assurance that licensed, certificated or QA activities can be conducted in compliance with the Commission's requirements, and that the health and safety of the public will be protected, if Cary W. Hedger is permitted at this time to be involved in NRC-licensed, certificated or QA activities. Therefore, the public health, safety, and interest require that Mr. Hedger be prohibited from any involvement in all NRC-licensed activities, including those associated with 10 CFR part 71 packaging QA Program Approval or certificate holder activity, for a period of three years from the date of this Order. Ordinarily, NRC would prohibit involvement in licensed activities for a period of five years in a case such as this. However, the NRC is mitigating the prohibition to three years because Mr. Hedger identified certain nonconformances in the shipping package number 1B, CoC No. 5979, Model No. 5979, to the NRC. Although he did not identify the nonconforming end-caps to the NRC, Mr. Hedger's disclosure ultimately led to the discontinued use of the package in the nonconforming condition. Furthermore, pursuant to 10 CFR 2.202, "Orders," I find that the significance of Mr. Hedger's conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the

Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 71.8, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. Cary W. Hedger is prohibited for *three* years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, the licensing, packaging certificate and QA program approval requirements of 10 CFR part 71, and those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Cary W. Hedger is currently involved with another licensee in NRC-licensed activities, other than AOS, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of that licensee, and provide a copy of this Order to the employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Cary W. Hedger of good cause.

V

In accordance with 10 CFR 2.202, Cary W. Hedger must submit an answer to this Order within 20 days of its issuance. In addition, Cary W. Hedger, and any other persons adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

The answer shall be in writing and under oath or affirmation, and shall specifically admit or deny each allegation or charge made in this Order. The answer shall set forth the matters of fact and law on which Cary W. Hedger or other persons adversely affected relies and the reasons as to why this Order should not have been issued. The answer may consent to the Order. Any answer shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, *ATTN:* Chief, Rulemaking and Adjudications Staff, Washington, DC 20555-0001. Copies shall also be sent to: the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to Cary W.

Hedger if the answer is by a person other than Cary W. Hedger.

If a person other than Cary W. Hedger requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If Cary W. Hedger or a person whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Cary W. Hedger, or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

A request for a hearing or to set aside the immediate effectiveness of this order must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August, 28 2007, (72 Fed. Reg. 49,139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic

Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited

delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention: Rulemaking and Adjudications Staff*. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 20th day of December 2007.

Martin J. Virgilio,

Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs, Office of the Executive Director for Operations.

[FR Doc. E7-25412 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-123]

The University of Missouri—Rolla: Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of the University of Missouri—Rolla Research Reactor Facility License No. R-79 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility License No. R-79, which authorizes the University of Missouri—Rolla (the licensee) to operate the University of Missouri—Rolla Research Reactor (UMRR) at a maximum steady-state thermal power of 200 Kilowatts (kW) thermal power. The renewed license would authorize the applicant to operate the UMRR for an additional 20-years beyond the period specified in the current license. The current license for the UMRR expired on January 14, 2005.

On August 30, 2004, the Commission's staff received an application from the licensee filed pursuant to 10 CFR Part 50.51(a), to renew Facility License No. R-79 for the UMRR. Because the license renewal application was filed in a timely manner in accordance with 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that the licensee has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that the application is acceptable for docketing. The current Docket No. 50-123 for Facility License No. R-79, will be retained.

The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within 60 days after the date of publication of this notice, the applicant may file a request for a hearing, and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a

hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE

viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon

depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG-1537, entitled "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors," can be obtained from the Commission's PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG-1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession No. ML041230055 for part one and ML041230048 for part two. Copies of the application to renew the facility license for the licensee are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852-2738. The initial application and other related documents may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS Accession Nos.: ML073200760, ML042820116, ML042820139, ML042820131, ML042820135, ML072340514, ML040720806. Persons who do not have access to ADAMS, or

who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 19th day of December 2007.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Acting Chief Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E7-25413 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has published a proposed rule on Geologic Repository Operations Area Security and Material Control and Accounting Requirements for public comment (72 FR 72522; December 20, 2007). The public comment period runs from December 20, 2007 thru March 4, 2008. As part of the public comment process, the NRC plans to hold a transcribed public meeting to solicit comments on the proposed rule. NRC staff will be taking comments only and will not be prepared to discuss or respond to comments or questions on the rule. The meeting is open to the public and all interested parties may attend. The meeting will be held on January 23, 2008, in the NRC Hearing Facility at the Pacific Enterprise Plaza, Building One, 3250 Pepper Lane, Las Vegas, Nevada. During the comment period, comments may also be mailed to the NRC or submitted via fax or e-mail.

DATES: January 23, 2008 from 3 p.m. to 7 p.m.

ADDRESSES: The January 23 meeting will be held in the NRC Hearing Facility at the Pacific Enterprise Plaza, Building One, 3250 Pepper Lane, Las Vegas, NV 89120.

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415-8126, e-mail, mlh1@nrc.gov of the Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to obtain

stakeholder comments on the Geologic Repository Operations Area Security and Material Control and Accounting Requirements Proposed Rule. The NRC staff will only be accepting comments at the meeting; staff will not be prepared to answer any questions related to the rule. The proposed rule would revise the security requirements and material control and accounting (MC&A) requirements for a geologic repository operations area (GROA). The goal of this rulemaking is to ensure that effective security measures are in place for the protection of high-level radioactive waste (HLW) and other radioactive material at a GROA given the post-September 11, 2001, threat environment. New requirements for specific training enhancements, improved access authorization, enhancements to defensive strategies, and enhanced reporting requirements would be incorporated. The proposed rule would establish general performance objectives and corresponding system capabilities for the GROA MC&A program, with a focus on strengthening, streamlining, and consolidating all MC&A regulations specific to a GROA. In addition, the proposed rule would require the emergency plan to address radiological emergencies. The proposed rule is available via the Federal eRulemaking Portal <http://www.regulations.gov>.

Agenda: Welcome—10 minutes; NRC staff presentation on Rule Requirements—30 minutes; Public Comment—remainder. There will be a 15 minute break at 5 p.m. To ensure that everyone who wishes has the chance to comment, we may impose a time limit on speakers.

Attendees are requested to notify Vivian Mehrhoff, telephone (702) 794-5053, e-mail vlm@nrc.gov to pre-register for the meetings. If you wish to pre-register, you need to contact the above individual by January 18, 2008. You will be able to register at the meeting, as well.

Dated at Rockville, Maryland, this 20th day of December, 2007.

For the Nuclear Regulatory Commission.

Dennis K. Rathbun,

Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7-25415 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-143]

Notice of License Amendment Request of Nuclear Fuel Services, Inc., Erwin, TN, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, and opportunity to request a hearing.

DATE: A request for a hearing must be filed by February 29, 2008.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Ramsey, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 492-3123; fax number: (301) 492-3359; e-mail: kmr@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated August 31, 2007, a license amendment application from Nuclear Fuel Services, Inc., requesting authority to process uranium hexafluoride (UF₆) in a new Commercial Development (CD) line at its facility site located in Erwin, Tennessee. License No. SNM-124 authorizes the licensee to manufacture nuclear reactor fuel. Specifically, the amendment provides authorization to convert high-enriched uranium (HEU) in the form of UF₆ into another chemical form (oxide or nitrate), which can be processed in the existing facility.

An NRC administrative review, documented in a letter to Nuclear Fuel Services Inc., dated October 5, 2007, found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. SNM-124. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding regarding an application for a license amendment for a new process line. Any person whose interest may be affected by this

proceeding and who desires to participate as a party must file a request for hearing, and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49139 (August 28, 2007). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) the creation of an electronic docket for the proceeding (even in instances for which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer(tm) to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer(tm) is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, has a docket created, and downloaded the EIE viewer, they can then submit a request for a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF), in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access, to the

document, to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209, or locally (301) 415-4737.

Participants who believe they have good cause for not submitting documents electronically, must file a motion in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document to all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m., Eastern Time, on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://>

ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded, pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents in 10 CFR 2.304(c)-(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by February 29, 2008.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial, or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for a hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions that support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant regarding a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.
4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.
5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of

these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs, with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within 10 days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this Notice is ML073090651, Redacted Version of Amendment Request for Processing UF6 in the CD Line Facility at the NFS Site. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 12th day of December 2007.

For the Nuclear Regulatory Commission.

Peter J. Habighorst,

Chief, Fuel Manufacturing Branch, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7-25406 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 6, 2007 to December 19, 2007. The last biweekly notice was published on December 18, 2007 (72 FR 71703).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by

calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitted e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday.

The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina.

Date of amendment request:

November 19, 2007.

Description of amendment request:

The proposed amendment would make administrative revisions to delete requirements that are obsolete or redundant, or correct and clarify the typing and formatting of other requirements. The proposed changes will not result in changes to the plant design or the procedural controls for the operation, surveillance, or maintenance of the plant.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the Proposed Changes Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

No. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative. The changes delete obsolete or redundant requirements, clarify existing requirements, and correct typing and formatting errors. There will be no resulting changes to the plant design or procedural controls. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the Proposed Changes Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated?

No. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. There are no physical changes being made to the plant or to the manner in which the plant is operated. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the Proposed Changes Involve a Significant Reduction in the Margin of Safety?

No. The proposed changes do not involve a significant reduction in the margin of safety. There are no physical changes being made to the plant or to the manner in which

the plant is operated. The proposed changes are administrative. The changes delete obsolete or redundant requirements, clarify existing requirements, and correct typing and formatting errors. Therefore, the changes do not involve a significant reduction in any margin of safety for HBRSEP [H.B. Robinson Steam Electric Plant], Unit No. 2.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal. Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Duke Power Company LLC, Docket No. 50–369, McGuire Nuclear Station, Unit 1, Mecklenburg County, North Carolina.

Date of amendment request: February 21, 2007, as supplemented August 9, 2007.

Description of amendment request: The proposed amendment would allow, on a one-time basis, an extension of the interval governing the conduct of the Integrated Leak Rate Test (ILRT) for McGuire Nuclear Station, Unit 1. The proposed amendment would revise administrative Technical Specification (TS) 5.5.2, "Containment Leak Rate Testing Program," from the currently approved 15-year interval (since the last McGuire Nuclear Station, Unit 1, Type A test) to a frequency encompassing the end of the McGuire Nuclear Station, Unit 1, End-of-Cycle 19 refueling outage (approximately 6 months beyond the present TS frequency).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

First Standard

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed extension to the Type A testing intervals cannot increase the probability of an accident previously evaluated since extension of the intervals is not a physical plant modification that could

alter the probability of accident occurrence, nor is it an activity or modification by itself that could lead to equipment failure or accident initiation. The proposed extension to the Type A testing intervals does not result in a significant increase in the consequences of an accident as documented in NUREG–1493 ["Performance-Based Containment Leak-Test Program", NUREG–1493, September 1995]. The NUREG notes that very few potential containment leakage paths are not identified by Type B and Type C tests. It concludes that reducing the Type A testing frequency to once per twenty years leads to an imperceptible increase in risk. McGuire [Nuclear Station, Unit 1 (McGuire Unit 1)] provides a high degree of assurance through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. Prior Type A tests for McGuire Unit 1 identified containment leakage within acceptance criteria, indicating a very leak tight containment. Inspections required by the ASME Code [American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code (Code)] are also performed in order to identify indications of containment degradation that could affect leak tightness. Separately, Type B and Type C testing, required by TS [Technical Specification] identify any containment opening from design penetrations, such as valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the Type A test intervals will not represent a significant increase in the consequences of an accident.

Second Standard

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions to the McGuire TS add a one-time extension to the current interval for Type A testing. The current test interval of fifteen years, based on past performance, would be extended on a one-time basis to approximately fifteen and a half years from the last Type A test. The proposed extension to the Type A test interval does not create the possibility of a new or different type of accident since there are no physical changes being made to the plants and there are no changes to the operation of the plants that could introduce a new failure mode.

Third Standard

The proposed amendment will not involve a significant reduction in a margin of safety. The proposed revisions to the McGuire TS add a one-time extension to the current interval for Type A testing. The current test interval of fifteen years, based on past performance, would be extended on a one-time basis to approximately fifteen and a half years from the last Type A test. The proposed extension to Type A test intervals will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing intervals found that a twenty-year interval resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent of the

overall risk and that decreasing the Type A testing frequency would have a minimal effect on this risk, since 95 percent of the Type A detectable leakage paths would already be detected by Type B and Type C testing. Similar proposed changes have been previously reviewed and approved by the NRC, and they are applicable to McGuire. Based upon the preceding discussion, Duke Energy Corporation [Duke Power Company, LLC] has concluded that the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Evangelos C. Marinos.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: November 15, 2007.

Description of amendment request: The proposed change would relocate Surveillance Requirement (SR) 3.8.3.6 from the Technical Specifications (TS) to a licensee-controlled document. SR 3.8.3.6 requires the Emergency Diesel Generator (EDG) Fuel Oil Storage Tanks (FOSTs) to be drained, sediment removed, and cleaned on a 10-year interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FOSTs provide the storage for the EDG fuel oil, assuring an adequate volume is available for each EDG to operate for seven days in the event of a loss of offsite power concurrent with a loss of coolant accident. The relocation of the SR to drain and clean the FOSTs will not impact any of the previously analyzed accidents. Sediment in the tank, or failure to perform this SR, does not necessarily result in an inoperable storage tank. Fuel oil quantity and quality are assured by other TS SRs which remain unchanged. These SRs help ensure tank sediment is minimized and ensure that any

degradation of the tank wall surface that results in a fuel oil volume reduction is detected and corrected in a timely manner. As a result, adequate controls exist to allow relocation of this preventative maintenance cleaning requirement to licensee controlled documents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes do not involve the addition or modification of any plant equipment. Also, the proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. The proposed TS change does not create any new credible failure mechanisms, malfunctions or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter or exceed a design basis or safety limit. Diesel generator fuel oil quantity and quality will continue to be maintained within acceptable limits of the TS to assure the ability of the EDG to perform its intended function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hilt.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Date of amendment request:
December 5, 2007.

Description of amendment request:
The proposed amendment would change the Grand Gulf Nuclear Station, Unit 1 (GGNS), Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)," to add a reference to an analytical method that will be used to determine core operating limits. The

new reference, NEDC-33383P, "GEXL97 Correlation Applicable to ATRIUM-10 Fuel," will allow Entergy Operations, Inc. (Entergy) to use a Global Nuclear Fuel (GNF) method to determine fuel assembly critical power of AREVA ATRIUM-10 fuel. GGNS currently operates with a full core of ATRIUM-10 fuel. Entergy plans to use the GEXL97 correlation for GGNS operating Cycle 17 currently scheduled to begin in the fall 2008. Additionally, an administrative change is proposed to an existing reference in TS 5.6.5.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Core operating limits are established each operating cycle in accordance with TS 3.2, "Power Distribution" and TS 5.6.5, "Core Operating Limits Report (COLR)". These core operating limits ensure that the fuel design limits are not exceeded during any conditions of normal operation or in the event of any Anticipated Operational Occurrence (AOO). The methods used to determine the operating limits are those previously found acceptable by the NRC and listed in TS Section 5.6.5.b.

A change to TS 5.6.5.b is requested to include an additional reference to the list of analytical methods. GGNS currently operates with a full core of AREVA ATRIUM-10 fuel but is scheduled to load GE14 fuel during the next refueling outage. GGNS plans to use the analysis methods of the new fuel vendor, GNF for the analysis of the mixed core. The GEXL97 correlation accurately models predicted core behavior and appropriately determines the overall critical power uncertainty of the method. In addition, the GEXL97 application range covers the range of expected operation of the ATRIUM-10 fuel during normal steady state and transient conditions in the GGNS reload cores. Although a depressurization transient could result in vessel pressures below the range of GEXL97, the transient would not threaten fuel cladding integrity, since the margin to the MCFR [minimum critical power ratio] safety limit increases with decreasing reactor pressure.

Additionally, Entergy proposes an administrative change to the GESTAR-II reference in TS 5.6.5.b. The administrative change does not alter any method of analysis as described in the NRC approved versions of GESTAR-II. The requested TS changes concern the use of analytical methods and do not involve any plant modifications or operational changes that could affect any postulated accident precursors or accident mitigation systems and do not introduce any new accident initiation mechanisms. The

proposed changes have no effect on the type or amount of radiation released, and have no effect on predicted offsite doses in the event of an accident. Thus, the proposed change does not affect the probability of an accident previously evaluated nor does it increase the radiological consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes will not change the design function, reliability, performance, or operation of any plant systems, components, or structures. It does not create the possibility of a new failure mechanism, malfunction, or accident initiators not considered in the design and licensing bases. Plant operation will continue to be within the core operating limits that are established using NRC approved methods that are applicable to the GGNS design and the GGNS fuel.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds GEXL97 to the list of analytical methods in TS 5.6.5.b that can be used to determine core operating limits. Use of the GEXL97 correlation analytical method provides an equivalent level of protection as that currently provided. The administrative change does not alter any method of analysis as described in the NRC approved versions of GESTAR-II. The proposed change does not modify the safety limits or set points at which protective actions are initiated, and does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania.

Date of amendment request: November 16, 2007.

Description of amendment request: The proposed changes revise technical specification (TS) action requirements associated with inoperable reactor coolant system (RCS) leakage detection systems. A new TS action requirement is proposed that will address the inoperability of the drywell unit cooler condensate flow rate monitoring system concurrent with one other RCS leakage detection system, other than the primary containment atmosphere gaseous radioactivity monitoring system. This would relax the allowed out-of-service time for the specified combination of systems and is related to the current inoperability of the drywell unit cooler condensate flow rate monitoring system. The proposed changes would be effective for the remainder of the current operating cycle (Cycle 10), which is currently scheduled to end in the spring of 2009, or until the next shutdown of sufficient duration to allow for drywell unit cooler condensate flow rate monitoring system repairs, whichever comes first.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes continue to maintain an acceptable level of reactor coolant system (RCS) leakage detection instrumentation required to support plant operations. The level of RCS leakage detection capability inherent with the proposed changes will continue to provide acceptable early warning detection of potential RCS pressure boundary degradation. The proposed changes do not impact the physical configuration or design function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, modified, tested, or inspected [with the exception of an increase in allowed out-of-service time for a concurrent inoperability of the drywell unit cooler condensate flow rate monitoring system and another specified RCS leakage detection system]. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events. Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes only affect systems associated with the detection of leakage resulting from the degradation of the RCS pressure boundary. The proposed changes do not alter plant configuration or require that new plant equipment be installed. The RCS leakage detection systems will continue to function as designed in all modes of operation. No new accident type is created as a result of the proposed changes. No new failure mode for any equipment is created. The proposed changes do not alter assumptions made about accidents previously evaluated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not involve any physical changes to plant SSCs or the manner in which SSCs are operated, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions of operation, or design parameters for any SSC. The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting an accident analysis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, with changes as noted above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois.

Date of amendment request: October 9, 2007.

Description of amendment request: A change is proposed to the technical specifications (TS) of Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, consistent with Technical Specifications Task Force (TSTF) Change Traveler TSTF–423 to the standard TSs for boiling water reactor plants, to allow, for some systems, entry

into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.65(a)(4). Changes proposed herein will be made to the QCNPS, Units 1 and 2, TSs for selected required action end states providing this allowance.

The licensee reviewed the proposed no significant hazards consideration (NSHC) determination published in the **Federal Register** on March 23, 2007 (71 FR 14726) and concluded that it is applicable to QCNPS, Units 1 and 2. The licensee incorporated the proposed determination by reference to satisfy the requirements of 10 CFR 50.91(a).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows a change to certain required end states when the TS Completion Times for remaining in power operation will be exceeded. Most of the requested technical specification (TS) changes are to permit an end state of hot shutdown (Mode 3) rather than an end state of cold shutdown (Mode 4) contained in the current TS. The request was limited to: (1) Those end states where entry into the shutdown mode is for a short interval, (2) entry is initiated by inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable technical specification, and (3) the primary purpose is to correct the initiating condition and return to power operation as soon as is practical. Risk insights from both the qualitative and quantitative risk assessments were used in specific TS assessments. Such assessments are documented in Section 6 of GE NEDC–32988, Revision 2, “Technical Justification to Support Risk Informed Modification to Selected Required Action End States for BWR Plants.” They provide an integrated discussion of deterministic and probabilistic issues, focusing on specific technical specifications, which are used to support the proposed TS end state and associated restrictions. The staff finds that the risk insights support the conclusions of the specific TS assessments. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting proposed TSTF–423, are no different than the consequences of an accident prior to adopting TSTF–423. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this

change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). If risk is assessed and managed, allowing a change to certain required end states when the TS Completion Times for remaining in power operation are exceeded, i.e., entry into hot shutdown rather than cold shutdown to repair equipment, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change and the commitment by the licensee to adhere to the guidance in TSTF-IG-05-02, Implementation Guidance for TSTF-423, Revision 0, "Technical Specifications End States, NEDC-32988-A," will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change allows, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed. The BWROG's [Boiling Water Reactor Owners Group's] risk assessment approach is comprehensive and follows staff guidance as documented in RGs [Regulatory Guides] 1.174 and 1.177. In addition, the analyses show that the criteria of the three-tiered approach for allowing TS changes are met. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A risk assessment was performed to justify the proposed TS changes. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Branch Chief: Russell Gibbs.

*Luminant Generation Company LLC,
Docket Nos. 50-445 and 50-446,
Comanche Peak Steam Electric Station,
Units 1 and 2, Somervell County, Texas*

Date of amendment request:
November 29, 2007.

Brief description of amendments:
Revision to Technical Specification (TS) 3.6.7, ("Spray Additive System," to allow modifications to the facility potentially required to comply with U.S. Nuclear Regulatory Commission (NRC)

Generic Letter 2004-02, "Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accident at Pressurized Water Reactors."

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change[s] [do] not impact the initiation or probability of occurrence of any accident.

The accidents evaluated in the Final Safety Analysis report (FSAR) that could be affected by this proposed change are those involving the pressurization of the containment and those involving recirculation of fluid within the Emergency Core Cooling System (ECCS) or the Containment Spray System (e.g., loss of coolant accidents (LOCAs)).

The change to a minimum pH [potential of Hydrogen] of 7.1 will not result in a significant increase in the radiological consequences of a LOCA as-described below.

The equilibrium spray pH during the recirculation phase resulting from this change will be greater than or equal to 7.1. The pH range for the spray will be bounded by the water spray solution which is borated water with a maximum of 2600 parts per million (ppm) boron buffered to a final spray solution pH much less than the 10.5 as described in the current FSAR Section 3.11(B) for the postulated spray solution environment. The maximum pH is the limiting parameter for equipment qualification. Since the resulting pH level will be closer to neutral using the lower limit of 7.1, post-LOCA corrosion of containment components will not be increased. Post-LOCA hydrogen generation will be reduced. There will not be an adverse radiation dose effect on any safety-related equipment. Thus, the potential for failures of the ECCS or safety-related equipment following a LOCA will not be increased as a result of the proposed change.

This modification affects the Containment Spray System which is intended to respond to and mitigate the effects of a LOCA. The Containment Spray System will continue to function in a manner consistent with the plant design basis. There will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

Therefore, these Technical Specification (TS) revisions do not affect the probability of any event initiators. There will be no adverse changes to normal plant operating parameters, Engineered Safety Features (ESF) actuation setpoints, or accident mitigation capabilities.

The proposed change allows the Spray Additive System currently used to mitigate

the consequences of an accident to maintain the equilibrium sump pH at greater than or equal to 7.1 to minimize chloride-induced stress corrosion cracking in austenitic stainless components important to safety located inside containment. Therefore, the proposed changes will not increase the probability of an accident or malfunction of equipment important to safety previously evaluated in the FSAR.

The offsite and control room doses will continue to meet the requirements of [Title 10 of the Code of Federal Regulations (10 CFR) part 100] 10 CFR 100, 10 CFR 50 Appendix A [General Design Criterion] GDC 19, [Standard Review Plan] SRP 15.6.5.11, and SRP 6.4.11. The proposed new pH limit will provide satisfactory retention of iodine in the sump water, as well as provide adequate pH control to minimize the potential of chloride-induced stress corrosion cracking of austenitic stainless steel components.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the revised Surveillance for the Containment Spray Additive System provides for a required minimum equilibrium pH in containment post accident. There are no electrical or mechanical components being added whose failure could prevent the system from functioning.

No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of the proposed changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of this proposed change. The amount of sodium hydroxide (NaOH) will provide a minimum equilibrium sump pH of 7.1 following mixing. Therefore, the possibility of a new or different type of accident is not created.

There are no changes which would cause the malfunction of safety-related equipment, assumed to be operable in the accident analyses, as a result of the proposed Technical Specification changes. The possibility of a malfunction of safety-related equipment with a different result is not created.

Therefore, the proposed change[s] [do] not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No

The only function of the chemical additive system is to provide pH control of the post-accident containment recirculation sump water, since the borated water from the Refueling Water Storage Tank (RWST) used as the containment spray pump suction source during injection is sufficient to remove iodine from the containment atmosphere following a LOCA. The net effect on the pH control function of reducing the

amount of buffer is that the equilibrium sump pH will be lowered to a minimum of 7.1. There will be no change to the current Technical Specification acceptance limits on RWST volume and boron concentration. The resulting equilibrium sump pH level from this change will be closer to neutral; therefore, the post-LOCA corrosion of containment components will not be increased (i.e., would be reduced).

Because the long term pH will be maintained greater than or equal to 7.1, margin to minimize the potential for stress corrosion cracking is maintained.

The radiological analysis, as discussed in the technical analysis above, is shown not to be impacted. There will be no change to the [departure from nucleate boiling ratio] DNBR Correlation Limit, the design DNBR limits, or the safety analysis DNBR limits discussed in Bases Section 2.1.1. There will be no effect on the manner in which Safety Limits or Limiting Safety System Settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no adverse impact on Departure of Nucleate Boiling Ratio limits, [heat flux hot channel factor] F_Q , [nuclear enthalpy rise hot channel factor] $F_{\Delta H}$, LOCA peak cladding temperature, peak local power density, or any other margin of safety.

Therefore the proposed change[s] [do] not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Thomas G. Hiltz.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California.

Date of amendment requests: October 2, 2007.

Description of amendment requests: The proposed amendments would revise Technical Specification (TS) 3.5.4, "Refueling Water Storage Tank (RWST)," Surveillance Requirement (SR) 3.5.4.2, to increase the minimum required borated water volume from "≥ [greater than or equal to] 400,000 gallons (81.5% indicated level)" to "≥ 455,300 gallons (93.6% level)," to reflect the new sump design required to comply with U.S. Nuclear Regulatory Commission (NRC) Generic Letter 2004-02, "Potential Impact of Debris Blockage on Emergency Recirculation during Design-Basis Accident at Pressurized Water Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change[s] [revise] the minimum RWST borated water volume. The RWST borated water volume is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The proposed change[s] [do] not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The effect on containment flood level, equipment qualification, and containment sump pH remain within the limits assumed in the design and accident analyses. The proposed change[s] [do] not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change[s] [do] not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change[s] are consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change[s] [do] not involve a physical alteration of the plant (i.e., no new or different components or physical changes are involved with this change) or a change in the methods governing normal plant operation. The change[s] [do] not alter any assumptions made in the safety analysis.

Therefore, the proposed change[s] will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The proposed change[s] to revise the required RWST minimum borated water volume [do] not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by [these] change[s]. The proposed change[s] will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed change[s] [do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Thomas G. Hiltz.

Pacific Gas and Electric Co., Docket No. 50-133, Humboldt Bay Power Plant (HBPP), Unit 3 Humboldt County, California.

Date of amendment request: November 5, 2007.

Description of amendment request: The licensee has proposed amending the technical specifications (TS) to delete many operational and administrative requirements upon transfer of spent nuclear fuel assemblies and fuel fragment containers from the Spent Fuel Pool (SFP) to the Humboldt Bay Independent Spent Fuel Storage Installation (ISFSI). Some TS requirements will be relocated to the HBPP Quality Assurance Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes reflect the transfer of spent fuel from the Spent Fuel Pool to the Humboldt Bay (HB) Independent Spent Fuel Storage Installation. Design basis accidents related to the SFP are discussed in the Humboldt Bay Power Plant Unit 3 Defueled Safety Analysis Report (DSAR). These postulated accidents are predicated on spent fuel being stored in the SFP. With the removal of the spent fuel from the SFP, there are no important-to-safety systems, structures or components required to function or to be monitored. In addition, there are no remaining credible accidents involving spent fuel or the SFP that require actions of a Certified Fuel Handler or Noncertified Fuel Handler to prevent occurrence or to mitigate consequences. The proposed change to the Design Features section of the Technical Specifications (TS) clarifies that the spent fuel is being stored in dry casks within an ISFSI. The probability or consequences of accidents at the ISFSI are evaluated in the HB ISFSI Final Safety Analysis Report (FSAR) and are independent of the accidents evaluated in the HBPP Unit 3 DSAR. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

The proposed changes reflect the reduced operational risks as a result of the spent fuel being transferred to dry casks within an ISFSI. The proposed changes do not modify any systems, structures or components. The

plant conditions for which the HBPP Unit 3 DSAR design basis accidents relating to spent fuel and the SFP have been evaluated are no longer applicable. The aforementioned proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of an accident. Design basis accidents associated with the dry cask storage of spent fuel are already considered in the HB ISFSI FSAR. No new accident scenarios are created as a result of deleting nonapplicable operational and administrative requirements. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from those previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes reflect the reduced operational risks as a result of the spent fuel being transferred to dry casks within an ISFSI. The design basis and accident assumptions within the HBPP Unit 3 DSAR and the TS relating to spent fuel are no longer applicable. The proposed changes do not affect remaining plant operations, nor structures, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the course of a decommissioning activity accident analysis. Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jennifer K. Post, Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, CA.

NRC Branch Chief: Andrew Persinko.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of amendment request: October 31, 2007.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.8.1, "Essential Service Water System (ESW)," and TS 3.8.1, "AC [Alternating Current] Sources—Operating." A note would be added to Condition A, one ESW train inoperable, of TS 3.8.1, and Condition B, one diesel generator (DG) inoperable, of TS 3.8.1 would be revised. The revisions are to allow a one-time completion time extension from 72 hours to 14 days to support a planned replacement of ESW piping prior to December 31, 2008, in the licensee's fall 2008 refueling outage.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

[The only change to the plant is that existing ESW piping will be replaced in the fall 2008 refueling outage. There are no other changes to the plant and no hardware or equipment will be added to the plant. This replacement is to address localized degradation of the ESW piping due to microbiologically induced corrosion.]

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed to the protection systems. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. The use of polyethylene (PE) piping [(i.e., replacing existing ESW piping by PE piping)] in the ESW system in accordance with ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] Code Case N-755, with justified materials and design exceptions as noted in [the licensee's letter dated August 30, 2007 (ULNRC-05434), which requested relief from the ASME Code to replace the ESW piping by the PE piping], will [have the PE piping that replaces the ESW piping] provide an acceptable level of quality and safety. There will be no changes to the essential service water (ESW) system or [the] ultimate heat sink (UHS) surveillance and operating limits. [The licensee's letter dated August 30, 2007,] demonstrates the acceptability of using the PE piping in this buried ASME Class 3 application [(i.e., replacing existing ESW piping)].

The proposed changes will not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configurations of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not affect the way in which safety-related systems perform their [safety] functions.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations

in the FSAR [Final Safety Analysis Report for the Callaway Plant].

The applicable radiological dose acceptance criteria [is unchanged] and will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed changes in the method by which any safety-related plant SSC performs its safety function. [The proposed changes will not affect the performance of the ESW piping in terms of providing mitigation of design basis accidents per the FSAR accident analyses.] The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F[\Delta]H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met. [The proposed changes will not affect the performance of the ESW piping in terms of providing mitigation of design basis accidents per the FSAR accident analyses.]

The proposed changes do not eliminate any surveillances or alter the frequency of [any] surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analyses will be changed.

The proposed changes will have no impact on the radiological consequences of a design basis accident.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Thomas G. Hiltz.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida.

Date of application for amendment: November 12, 2007.

Brief description of amendment: Use of alternate method of monitoring rod position for a control rod or shutdown rod with an inoperable rod position indicator.

*Date of publication of individual notice in the **Federal Register**:* November 28, 2007 (72 FR 67323).

Expiration date of individual notice: December 28, 2007 (Public comments) and January 28, 2008 (Hearing requests).

Notice of Issuance of amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Duke Power Company LLC, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of application of amendments: January 31, 2007.

Brief description of amendments: The amendments revised the Technical Specifications to remove requirements that are no longer applicable due to the completion of the control room intake/booster fan modifications.

Date of Issuance: December 11, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 358, 360, and 359.
Renewed Facility Operating License Nos. DPR-38, DPR-47, and DPR-55:

Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register**:* October 9, 2007 (72 FR 57353). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 2007.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50-397, Columbia Generating Station, Benton County, Washington.

Date of application for amendment: July 30, 2007, as supplemented by letter dated November 6, 2007.

Brief description of amendment: The changes revise Technical Specification (TS) 1.4, "Frequency," TS 3.1.5, "Control Rod Scram Accumulators," TS 3.4.1, "Recirculation Loops Operating," TS 3.5.1, "ECCS [Emergency Core Cooling System]—Operating," TS 3.5.2, "ECCS—Shutdown," TS 3.7.1, "Standby Service Water (SW) System and Ultimate Heat Sink (UHS)," TS 3.8.1, "AC [Alternating Current] Sources—Operating," TS 3.8.2, "AC Sources—Shutdown," and TS 5.5.6, "In-service Testing Program." The changes include updates to adopt approved TS Task Force (TSTF) Travelers 284, Revision 3, "Add 'Met' vs. 'Perform' to Specification 1.4, Frequency," TSTF-479, Revision 0, "Changes to Reflect Revision of 10 CFR 50.55a," and TSTF-485, Revision 0, "Correct Example 1.4-1," and TSTF-497, Revision 0, "Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less."

Date of issuance: December 13, 2007.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 205.

Facility Operating License No. NPF-21: The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* August 28, 2007 (72 FR 49572). The supplement dated November 6, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as initially published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 2007.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: July 2, 2007.

Brief description of amendment: The amendment modified River Bend Station, Unit 1, technical specifications (TSs) requirements for MODE change limitations in Limiting Condition for Operation 3.0.4 and Surveillance Requirement 3.0.4. The TS changes are consistent with Revision 9 of NRC-approved Industry TS Task Force (TSTF) Standard TS Change Traveler, TSTF-359, "Increase Flexibility in MODE Restraints." In addition, the amendment also changed TS Section 1.4, "Frequency," Example 1.4-1, "Surveillance Requirements," to accurately reflect the changes made by TSTF-359, which is consistent with NRC-approved TSTF-485, Revision 0, "Correct Example 1.4-1."

Date of issuance: December 6, 2007.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment No.: 156.

Facility Operating License No. NPF-47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: September 11, 2007 (72 FR 51856).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 2007.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50-315, Donald C. Cook Nuclear Plant, Units 1 and 2 (DCCNP-1 and DCCNP-2), Berrien County, Michigan.

Date of application for amendments: September 15, 2006, as supplemented on July 25 and October 9, 2007.

Brief description of amendments: The amendments revised the DCCNP-1 and DCCNP-2 Technical Specifications (TS) to allow certain functions in the reactor protection system and engineered safety feature actuation system instrumentation which have installed bypass test capability to be tested in bypass. The licensee's request to correct the administrative error will be reviewed and resolved by separate correspondence.

Date of issuance: December 17, 2007.

Effective date: As of the date of issuance, and shall be implemented within 45 days.

Amendment No.: 300, 283.

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revise the License Page and Technical Specifications.

Date of initial notice in Federal Register: November 21, 2006 (71 FR 67396)

The supplemental letters contained clarifying information, did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a safety evaluation dated December 17, 2007.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas.

Date of amendment request: December 19, 2006.

Brief description of amendments: The amendments revised Technical Specification 5.5.16, "Containment Leakage Rate Testing Program," for consistency with the requirements of paragraph 50.55a(g)(4) of Title 10 of the Code of Federal Regulations for components classified as Code Class CC.

Date of issuance: December 13, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1-141; Unit 2-141.

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: May 8, 2007 (72 FR 26179). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 2007.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 16, 2007, as supplemented by letter date November 5, 2007.

Brief description of amendment: The amendment revised Technical Specification 5.5.6, "Inservice Testing Program," to allow a one-time extension of the 5-year frequency requirement for setpoint testing of safety valve MS-RV-70ARV.

Date of issuance: December 4, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 228.

Facility Operating License No. DPR-46: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: September 25, 2007 (72 FR 54476). The supplement dated November 5, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as initially published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2007.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 28, 2007, as supplemented by letter dated May 22, 2007.

Brief description of amendments: The amendments revise the language in the Technical Specifications to conform to the licensing basis as established by Amendment Nos. 87 and 74, for Units 1 and 2, respectively, dated May 27, 1997.

Date of issuance: December 6, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1-181; Unit 2-168.

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: May 22, 2007 (72 FR 28723). The supplement dated May 22, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 2007.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant (PINGP), Units 1 and 2, Goodhue County, Minnesota.

Date of application for amendments: December 14, 2006, supplemented by letter dated November 13, 2007.

Brief description of amendments: The amendments revise the sump debris interceptor nomenclature in PINGP Unit 1 and Unit 2 Technical Specifications (TS) 3.5.2 to more clearly reflect the configuration of the new Emergency Core Cooling System sump strainers that were installed to address Generic Letter 2004-02, "Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors." The amendments also revise the required Refueling Water Storage Tank (RWST) water level in TS 3.5.4 to reflect the administratively controlled water inventory in the RWST.

Date of issuance: December 14, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 182/172.

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Facility Operations License and Technical Specifications.

Date of initial notice in Federal Register: February 27, 2007 (72 FR 8804)

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 14, 2007.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska.

Date of amendment request: July 31, 2007.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.7(1), (Electrical Systems—Minimum Requirements," TS 2.7(2), ("Electrical Systems—Modification of Minimum Requirements," and TS 3.7(5), "Emergency Power System Periodic Tests—Required Safety Related Inverters." The licensee is adding two safety-related swing inverters to the 120 Volt alternating current instrument buses. The TS changes reflect modifications made to the plant and are

needed to take advantage of the additional operational flexibility the swing inverters will provide.

Date of issuance: December 17, 2007.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 251.

Renewed Facility Operating License No. DPR-40: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 2007 (72 FR 49582). The Commission's related evaluation of the amendment is contained in a safety evaluation dated December 17, 2007.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 21st day of December, 2007.

For The Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7-25416 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Security Officer Attentiveness

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel, and Category I fuel facilities. The contents of this bulletin are for information to Category III fuel facilities, independent spent fuel storage installations, conversion facilities and gaseous diffusion plants. The U.S. Nuclear Regulatory Commission (NRC) is issuing this bulletin to achieve the following three objectives:

1. The agency is notifying addressees about the NRC staff's need for information associated with licensee security program administrative and management controls as a result of security personnel inattentiveness, especially involving complicity, and related concerns with the behavior observation program (BOP). The information is needed to determine if further regulatory action is warranted, if the necessary inspection program needs to be enhanced, or if additional assessment of security program implementation is needed.

2. The NRC seeks to obtain information on licensee administrative and managerial controls to deter and address inattentiveness and complicity among licensee security personnel including contractors and subcontractors.

3. This bulletin requires that addressees provide a written response to the NRC in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.54(f) or 10 CFR 70.22(d).

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML073480342.

DATES: The bulletin was issued on December 12, 2007.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT:

Timothy S. McCune at 301-415-6474 or by email tsm5@nrc.gov, Kevin Ramsey at 301-415-3123 or by e-mail kmr@nrc.gov, or Merrilee Banic at 301-415-2771 or email mjb@nrc.gov.

SUPPLEMENTARY INFORMATION: NRC Bulletin 2007-01 may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. The ADAMS number for the bulletin is ML051740058.

If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 19th day of December 2007.

For the Nuclear Regulatory Commission.

Martin C. Murphy,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E7-25398 Filed 12-28-07; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28082; 812-13411]

Main Street Capital Corporation, et al.; Notice of Application

December 21, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 57(c) and 57(i) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a), 23(a), 23(b), 57(a)(1), 57(a)(2), 61(a) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF THE APPLICATION:

Applicants, Main Street Capital Corporation (the "Company"), Main Street Mezzanine Fund, LP ("MSMF"), Main Street Capital Partners, LLC (the "Investment Adviser"), and Main Street Mezzanine Management, LLC (the "General Partner"), request an order to permit: (1) A business development company and its wholly-owned subsidiaries to engage in certain transactions that otherwise would be permitted if the business development company and its subsidiaries were one company, (2) the business development company to adhere to a modified asset coverage requirement, and (3) the business development company to issue restricted shares of its common stock under the terms of its employee and director compensation plans.

FILING DATES: The application was filed on July 27, 2007, and amended on December 4, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2008, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, c/o Vincent D. Foster, Chief Executive Officer, Main Street Capital Corporation, 1300 Post Oak Boulevard, Suite 800, Houston, TX 77056.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

Applicants' Representations

1. The Company, a Maryland corporation organized in March 2007, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act.¹ The Company will operate as a specialty investment company focused on providing customized financing solutions to companies with annual revenues between \$10 million and \$100 million. The Company's investment objective is to maximize total return by generating current income from debt investments and realizing capital appreciation from equity-related investments. The Company's investments generally will range in size from \$2 million to \$15 million. Shares of the Company's common stock are traded on The NASDAQ Global Select Market under the symbol "MAIN." After the IPO which was completed in October 2007, there were 8,826,726 shares of the Company's common stock outstanding. As of October 2, 2007, the Company had 13 employees.

2. The Company has a six member board of directors (the "Board") of whom two are "interested persons" of the Company within the meaning of section 2(a)(19) of the Act and four are non-interested persons ("Non-interested Directors"). The Company has four directors who are neither employees nor

officers of the Company (the "Non-Employee Directors").

3. MSMF, a Delaware limited partnership and an indirect wholly-owned subsidiary of the Company, is a small business investment company ("SBIC") licensed under the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBIA"). MSMF relies on section 3(c)(7) of the Act. The General Partner, which is a wholly-owned subsidiary of the Company, owns a 0.7% general partnership interest in MSMF. The Investment Adviser, a Delaware limited liability company and a wholly-owned subsidiary of the Company, is the investment adviser to MSMF.

4. The Company may in the future establish additional wholly-owned subsidiaries (together with MSMF, the "Subsidiaries"), including Subsidiaries licensed by the SBA to operate under the SBIA as SBICs ("SBIC Subsidiaries").

5. The Company believes that its successful performance depends on its ability to offer compensation packages to its professionals that are competitive with those offered by other investment management businesses. The Company believes its ability to offer compensation plans providing for the periodic issuance of shares of restricted stock (*i.e.*, stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) (the "Restricted Stock") is vital to its future growth and success. The Company wishes to adopt equity-based compensation plans for its Non-Employee Directors (the "Director Plan") and its employees and employees of its Subsidiaries (the "Employee Plan", and together the "Plans") (the "Participants").

6. The Plans will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment or service on the Company's Board, as the case may be (lapsing either on an annual or other periodic basis or on a "cliff" basis, *i.e.*, at the end of a stated period of time), the performance of the Company, or other restrictions deemed by the Board to be appropriate. The Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Board. Except to the extent restricted under the terms of a Plan, a Participant granted Restricted Stock will have all the rights of any other shareholder, including the right to vote the Restricted Stock and the right

¹ Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

to receive dividends. During the restriction period, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Participant. Except as the Board otherwise determines, upon termination of a Participant's employment or service on the Board during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

7. The maximum number of shares that may be issued under the Plans will be 10% of the outstanding shares of the Company's common stock on the effective date of the Plans plus 10% of the number of shares of the Company's common stock issued or delivered by the Company (other than pursuant to compensation plans) during the term of the Plans.² The Employee Plan limits the total number of shares that may be awarded to any single Participant in a single year to 500,000 shares. In addition, no Participant may be granted more than 25% of the shares reserved for issuance under the Plans. The Employee Plan will be administered by the Board, which will award shares of Restricted Stock to the Participants from time to time as part of the Participants' compensation based on a Participant's actual or expected performance and value to the Company.

8. Under the Director Plan, the Company's Non-Employee Directors will each receive a grant of \$30,000 worth of shares of Restricted Stock at the beginning of each one-year term of service on the Board, for which forfeiture restrictions will lapse at the end of that year. The Director Plan will be administered by the Board, and the grants of Restricted Stock under the Director Plan will be automatic and will not be changed without Commission approval.

9. The Plans have been approved by the Board. The Plans will be submitted for approval to the Company's shareholders, and will become effective upon such approval, subject to the issuance of the requested order.

Applicants' Legal Analysis

A. Relief for the Company and Its Subsidiaries To Engage in Certain Transactions and for the Company To Adhere to a Modified Asset Coverage Requirement

1. Applicants request an order pursuant to sections 6(c), 57(c) and 57(i) of the Act and rule 17d-1 under the Act granting exemptions from sections 18(a), 57(a)(1), 57(a)(2) and 61(a) of the Act and permitting certain transactions otherwise prohibited by section 57(a)(4) of the Act to permit the Company and the Subsidiaries to engage in certain transactions that otherwise would be permitted if the Company and the Subsidiaries were one company and to permit the Company to adhere to a modified asset coverage requirement.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that a question exists as to whether the Company must comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) solely on an individual basis or whether the Company must also comply with the asset coverage requirements on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior securities issued by MSMF or another SBIC Subsidiary. Applicants state that they wish to treat MSMF and other SBIC Subsidiaries as if each were a BDC subject to sections 18 and 61 of the Act. Applicants state that companies operating under the SBIA, such as MSMF, will be subject to the SBA's substantial regulation of permissible leverage in its capital structure.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the

section 6(c) standard. Applicants contend that, to the extent that the Company is entitled to rely on section 18(k) for an exemption from the asset coverage requirements of section 18(a) and 61(a), there is no policy reason to deny the benefit of that exemption when the Company consolidates its assets with those of MSMF and other SBIC Subsidiaries for the purpose of compliance with those requirements.

5. Sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person, directly or indirectly, either controlling, controlled by or under common control of the BDC. Applicants state that the Company owns or will directly or indirectly own more than 99.9% of the voting securities of each Subsidiary and each Subsidiary is or will be under the common control of the Company. Applicants further state that any purchase or sale between (a) the Company and one or more subsidiaries, (b) Subsidiaries and downstream controlled affiliates of the Company and another subsidiary and (c) the Company and a controlled portfolio affiliate of a Subsidiary may be prohibited. Applicants submit that the requested relief is to permit the Company and its Subsidiaries, all of whom are owned, directly or indirectly, by the shareholders of the Company, to do that which they would otherwise be permitted to do if they were one company.

6. Section 57(c) provides that the Commission will exempt a proposed transaction from the terms of the proposed transactions, including the consideration to be paid or received, if they are reasonable and fair and do not involve overreaching of any person concerned, and the proposed transaction is consistent with the policy of the BDC concerned and the general purposes of the Act. Applicants submit that the requested relief meets this standard.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company, or an affiliated person of such person, acting as principal, from participating in any joint transaction or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint transactions involving BDCs and certain affiliates of their affiliates as described in section

² For purposes of calculating compliance with this limit, the Company will count as Restricted Stock all shares of the Company's common stock that are issued pursuant to the Plans less any shares that are forfeited back to the Company and cancelled as a result of forfeiture restrictions not lapsing.

57(b). Section 57(i) of the Act provides that rules and regulations under sections 17(a) and 17(d) and rule 17d-1 will apply to transactions subject to section 57(a)(4) in the absence of rules under the section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standard set forth in rule 17d-1 governs applicants' request for relief.

8. Applicants state that a joint transaction in which a Subsidiary and the Company or another Subsidiary are participants may be prohibited under section 57(a)(4) because the Company would not be a controlled affiliate of the Subsidiaries. Applicants request relief under sections 57(i) and rule 17d-1 to permit joint transactions in which a Subsidiary and the Company or another Subsidiary participate to the extent that such transactions would not be prohibited if the Subsidiaries participating in the transactions were deemed to be part of the Company and not separate companies.

9. In determining whether to grant an order under section 57(i) and rule 17d-1, the Commission considers whether the participation of the BDC in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the transaction. Applicants state that the standard is satisfied because the requested relief would be simply to permit the Company and its Subsidiaries to conduct their business as if they were one company.

B. Relief for the Company To Issue Restricted Stock

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plans.

2. Section 23(b) generally prohibits a closed-end investment company from selling its common stock at a price below its current net asset value ("NAV"). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plans would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. The Company requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act. The Company states that the concerns underlying those sections include: (i) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (ii) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (iii) dilution of shareholders' equity in the investment company. The Company states that the Plans do not raise the concern about preferential treatment of the Company's insiders because the Plans are bona fide compensation plans of the type that is common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. The Company states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. The Company states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. The Company also asserts that the Plans would not become a means for insiders to obtain control of the Company because the number of shares of the Company issuable under the Plans would be limited as set forth in the application. The Company's current intention is to issue only shares of Restricted Stock as incentive compensation; however, if the Company issues stock options in the future, it will do so pursuant to section 61. Moreover, no individual Participant could be issued more than 25% of the shares reserved for issuance under the Plans.

5. The Company further states that the Plans will not unduly complicate the

Company's structure because equity-based employee compensation arrangements are widely used among corporations and commonly known to investors. The Company notes that the Plans will be submitted to the Company's shareholders for their approval. The Company represents that a concise, "plain English" description of the Plans, including their potential dilutive effect, will be provided in the proxy materials that will be submitted to the Company's shareholders. The Company also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). The Company further notes that the Plans will be disclosed to investors in accordance with the requirements of the Form N-2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, the Company will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act.³ The Company thus concludes that the Plans will be adequately disclosed to investors and appropriately reflected in the market value of the Company's shares.

6. The Company acknowledges that, while awards granted under the Plans would have a dilutive effect on the shareholders' equity in the Company, that effect would be outweighed by the anticipated benefits of the Plans to the Company and its shareholders. The Company asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, the Company suggests, in turn are likely to increase the Company's performance and shareholder value. The Company also asserts that equity-based compensation would more closely align the interests of the Company's employees with those of the Company's shareholders. The Company believes that the granting of shares of Restricted Stock to Non-Employee Directors under the Director Plan is fair and reasonable because of

³In addition, Applicant will comply with the amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors to the extent adopted and applicable to BDCs. See Executive Compensation and Related Party Disclosure, Release No. 34-53185 (Jan. 27, 2006).

the skills and experience that such directors provide to the Company. Such skills and experience are necessary for the management and oversight of the Company's investments and operations. The Company believes that granting the shares of Restricted Stock will provide significant incentives for Non-Employee Directors to remain on the Board and to devote their best efforts to the success of the Company's business in the future. The issuance of shares of Restricted Stock will also provide a means for the Company's Non-Employee Directors to increase their ownership interest in the Company, thereby helping to ensure a close identification of their interests with those of the Company and its shareholders.

7. In addition, the Company states that the Company's shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plans by the Company's Board. The full Board and the Committee will review periodically the potential impact that the issuance of Restricted Stock could have on the Company's earnings and NAV per share, such review to take place prior to any decisions to issue Restricted Stock under the Plans, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plans would not have an effect contrary to the interests of the Company's shareholders. This authority will include the authority to prevent or limit the grant of additional Restricted Stock under the Plans.

Section 57(a)(4), Rule 17d-1

8. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) ("57(b) persons"), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d-1, made applicable to BDCs by section 57(i), proscribes participation in a "joint enterprise or other joint arrangement or profit-sharing plan," which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d-1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether

the participation of the BDC in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

9. The Company requests an order pursuant to section 57(a)(4) and rule 17d-1 to permit the Plans. The Company states that the Plans, although benefiting the Participants and the Company in different ways, are in the interests of the Company's shareholders because the Plans will help the Company attract and retain talented professionals, help align the interests of the Company's employees with those of its shareholders, and in turn help produce a better return to the Company's shareholders. Thus, the Company asserts that the Plans are consistent with the policies and purposes of the Act and that the Company's participation in the Plans will be on a basis no less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. Relief for the Company and Its Subsidiaries To Engage in Certain Transactions and for the Company To Adhere to a Modified Asset Coverage Requirement

1. The Company will at all times be the sole limited partner of any Subsidiary and the sole owner of the Subsidiary's general partner, or otherwise own and hold beneficially, all of the outstanding voting securities or other equity interests in the Subsidiary.

2. No person shall serve or act as investment adviser to MSMF or another Subsidiary unless the Company's Board and shareholders of the Company shall have taken the action with respect thereto also required to be taken by the functional equivalent of the board of directors of MSMF or another Subsidiary and shareholders of MSMF or another Subsidiary as if MSMF or another Subsidiary were a BDC.

3. The managers of a Subsidiary will be the Company, a Subsidiary of the Company, or a person elected or appointed by the Company.

4. The Company will not issue or sell any senior security and the Company will not cause or permit MSMF or any other SBIC Subsidiary to issue or sell any senior security of which the Company, MSMF or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that immediately after

issuance or sale by any of the Company, MSMF or any other SBIC Subsidiary of any such senior security, the Company individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)), except that, in determining whether the Company on a consolidated basis has the asset coverage required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of MSMF or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), will be treated as indebtedness not represented by senior securities.

B. Relief for the Company To Issue Restricted Stock

1. The Employee Plan will be authorized in accordance with section 61(a)(3)(A)(iv) of the Act, and each Plan will be approved by the Company's shareholders.

2. Each issuance of Restricted Stock to employees, officers and Non-Employee Directors will be approved by the Required Majority, as defined in section 57(o) of the Act, of the Company's directors on the basis that such issuance is in the best interests of the Company and its shareholders.

3. The amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Company, except that if the amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights issued to the Company's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plans, would exceed 15% of the outstanding voting securities of the Company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 20% of the outstanding voting securities of the Company.

4. The maximum amount of Restricted Stock that may be issued under the Plans will be 10% of the outstanding shares of common stock of the Company on the effective date of the Plans plus 10% of the number of shares of the Company's common stock issued or delivered by the Company (other than pursuant to compensation plans) during the term of the Plans.

5. Both the full Board and the Committee will review periodically the potential impact that the issuance of Restricted Stock under the Plans could have on the Company's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plans, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plans would not have an effect contrary to the interests of the Company's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plans. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-25357 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28083; 812-13464]

Millennium India Acquisition Company Inc.; Notice of Application

December 21, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTIONS: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 12(d)(3) of the Act.

Applicant: Millennium India Acquisition Company Inc. ("Applicant").

Summary of Application: Applicant seeks an order under section 6(c) of the Act to permit Applicant to invest in the securities of two issuers that each derives more than 15% of its gross revenues from securities related activities as defined in rule 12d3-1(d)(1) under the Act, in excess of the limitations in rule 12d3-1(b).

Filing Dates: The application was filed on December 18, 2007, and amended on December 21, 2007.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may

request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2008, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-1090. Applicant, c/o Mr. F. Jacob Cherian, Millennium India Acquisition Company Inc., 330 East 38th Street, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

Applicant's Representations

1. Applicant, a Delaware corporation, is registered as a non-diversified, closed-end management investment company under the Act. Applicant was formed in March 2006 as a special purpose acquisition company to serve as a vehicle to effect a merger, asset acquisition or other business combination with one or more businesses that have operations primarily in India.

2. SMC Global Securities Limited ("SMC") and SAM Global Securities Limited ("SAM"), together with their respective subsidiaries, comprise the SMC Group of Companies (the "SMC Group"). The SMC Group, which is based in New Delhi, India, provides various financial services, including equities and commodities brokerage, mutual fund and initial public offering distribution, and depository and clearing services. More than 15% of SMC's and SAM's gross revenues are derived from "securities related

activities" as defined in rule 12d3-1(d)(1) under the Act.¹

3. On May 12, 2007, Applicant entered into two substantially identical share subscription agreements (the "Subscription Agreements") to invest in 14.9% of the equity securities of each of SMC and SAM, subject to shareholder approval and other conditions (the "Acquisition Transaction").² In addition, Applicant has entered into a set of substantially identical option agreements that grant Applicant an option, exercisable within 30 days of the closing date of the corresponding Acquisition Transaction and subject to applicable law, to require SMC or SAM or both to begin regulatory approval proceedings that would permit it to issue global depository shares to Applicant, which upon conversion into equity shares, represent an additional 6% of the equity share capital of SMC or SAM, as the case may be.

4. The Applicant will not actively manage a portfolio. Rather, after the Acquisition Transaction closes, the Applicant intends to invest at least 80% of its assets in the securities of the SMC Group, U.S. government securities and other short-term instruments, unless or until such time as it raises additional capital. Upon consummation of the Acquisition Transaction and the related global depository share acquisition, over 90% of Applicant's assets would be invested in the SMC Group. If the Applicant raises additional capital it may, if then permitted by Indian law and other regulatory requirements, make additional investments in the SMC Group or it may invest in one or more other Indian companies. Applicant does not seek an exemption from section 12(d)(3) of the Act for investment in the securities of any company other than the SMC Group.

5. Applicant's certificate of incorporation requires that the holders of a majority of Applicant's publicly listed common stock approve the Acquisition Transaction at a stockholders' meeting convened to consider proposals to approve such transactions. Moreover, shareholders who do not approve of the transactions may elect to have their publicly-traded shares converted into cash. Applicant will be precluded from proceeding with

¹ Subparagraph (d)(1) of rule 12d3-1 defines "securities related activities" to mean a person's activities as a broker, dealer, underwriter, or investment adviser to a registered investment company.

² As described more fully in the application, Applicant does not seek to acquire more than 14.9% of the equity securities of SMC or SAM due to certain restrictions and lack of clarity in the regulatory approval process and timelines under Indian law.

the Acquisition Transaction if more than 19.99% of Applicant's shareholders vote against the Acquisition Transaction and exercise their right to convert their shares to cash. Applicant filed definitive proxy materials on December 21, 2007, and expects to mail them to its shareholders on or about December 27, 2007. The shareholders' meeting is scheduled for January 10, 2008.

6. Applicant believes that permitting Applicant to invest in the equity securities of SMC and SAM in excess of the quantitative limitations set forth in rule 12d3-1(b) would benefit Applicant and be in the best interests of shareholders. Applicant will comply with all other requirements of rule 12d3-1.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits a registered investment company from purchasing or otherwise acquiring any securities issued by any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of a registered investment company or a registered investment adviser. Rule 12d3-1 under the Act exempts the acquisition of securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from "securities related activities," provided that, among other things, immediately after such acquisition, (i) the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer and (ii) the acquiring company owns not more than 5% of the outstanding securities of that class of the issuer's equity securities. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicant requests an order pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 12(d)(3) of the Act to the extent necessary to permit Applicant to invest in the equity securities of SMC and SAM, each an issuer that derives more than 15% of its gross revenues from "securities related activities," in excess of the quantitative limitations set forth in rule 12d3-1(b).

3. Applicant states that section 12(d)(3) was intended (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (b) to prevent potential conflicts of interest and to eliminate certain reciprocal practices between investment companies and securities related businesses, and (c) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. Applicant believes that its investment in the SMC Group does not raise the same type of entrepreneurial risks that may have concerned Congress in enacting section 12(d)(3). Applicant states that the ownership structure of most securities related businesses has changed since the time of enactment from partnership to a corporate form resulting in the limited liability status of these entities. In this case, Applicant argues that shareholders choosing to invest in Applicant have sought exposure to a vehicle that provides a non-diversified investment in one or more businesses with operations primarily in India,³ and Applicant's shareholders will have the opportunity to approve or reject the proposed investment after full disclosure of the transactions and the attendant risks.

5. Applicant also believes that the Acquisition Transaction will not create potential conflicts of interest for Applicant or its shareholders. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant notes that, as a condition to the granting of exemptive relief, the SMC Group and its affiliated persons within the meaning of section 2(a)(3) of the Act and affiliated persons of such affiliated persons (collectively, "Affiliates") will not sell any securities issued by Applicant and will not act as agent or as broker in connection with the sale of any shares of Applicant.⁴

³ The information that Applicant's shareholders will receive after the Acquisition Transaction demonstrates Applicant's role as a vehicle for U.S. investors to invest in an Indian company. As described more fully in the application, Applicant generally will file Forms 8-K furnishing the quarterly and annual financial statements translated into U.S. GAAP of SMC and SAM within five business days of receipt from SMC and SAM and also file promptly Forms 8-K furnishing any material information publicly disclosed by SMC and SAM under the Indian securities regulatory scheme or that would be required if the underlying securities were being registered under the Securities Act of 1933, as amended.

⁴ The terms and conditions of the application will be made binding on SMC Group through an

6. Applicant states that another potential conflict of interest is that a broker-dealer could be influenced to recommend to its clients certain investment companies that invest in such broker-dealer, thereby using the assets of the investment companies to boost the price of the broker-dealer. Applicant notes that, as a condition to the requested order, the SMC Group and its Affiliates will not sell any securities issued by Applicant as an underwriter, will not make a market in any securities issued by Applicant and will not act as agent or a broker in connection with the sale of any shares of the Applicant.

7. Applicant states that another purpose of section 12(d)(3) is to prevent investment companies from directing brokerage to a broker-dealer in which the investment company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. Applicant represents that it is not a trading vehicle and will not actively trade in securities of SAM, SMC or securities of other issuers. Further, as a condition to the requested order, Applicant and its Affiliates will not use the SMC Group or its Affiliates as a broker-dealer for the purchase or sale of any portfolio securities.

8. Applicant also believes that section 12(d)(3) reflects a concern with respect to the liquidity of an investment company's portfolio. Because shareholders invested in Applicant for the specific purpose of buying and holding a vehicle that would provide a non-diversified investment in an Indian enterprise, liquidity of the Applicant's portfolio is not a concern for Applicant's shareholders. Moreover, Applicant is a closed-end investment company that does not offer redeemable securities; therefore, there are no minimum liquidity standards applicable to Applicant under the Act.

9. Applicant believes that the Acquisition Transaction does not present the potential for the risks and abuses section 12(d)(3) is intended to eliminate, including the risk of reciprocal practices. Applicant believes that the standards set forth in section 6(c) have been met.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Acquisition Transaction will not be consummated unless it is approved by the holders of a majority of

undertaking by the SMC Group or amendments to the Subscription Agreements.

the Applicant's publicly-listed shares of common stock present in person or by proxy at a stockholders' meeting convened to consider proposals to approve the Acquisition Transaction and unless holders of less than 20% of the Applicant's publicly-listed shares of common stock seek to convert their shares to cash.

2. Applicant will not invest in any financial services companies other than the SMC Group. Applicant will not actively trade in securities of SAM, SMC or securities of other issuers.

3. The SMC Group and its Affiliates will not sell any securities issued by Applicant as an underwriter, will not make a market in any securities issued by Applicant and will not act as agent or as a broker in connection with the sale of any shares of the Applicant.

4. Applicant and its Affiliates will not use the SMC Group or its Affiliates as a broker-dealer for the purchase or sale of any portfolio securities.

5. The SMC Group and its Affiliates will not act as custodian for Applicant and its Affiliates nor will they provide any other services to Applicant and its Affiliates.

6. No officer of Applicant or member of Applicant's board of directors ("Board") shall be affiliated with the SMC Group or its Affiliates (other than as a result of the Acquisition Transaction discussed herein).

7. Applicant's Chief Compliance Officer will monitor and report to Applicant's Board no less than annually on compliance with these conditions.

8. Applicant will comply with the provisions of rule 12d3-1 under the Act, except for paragraph (b) solely to the extent necessary to permit Applicant to have more than 5% of the value of its total assets invested in more than 5% of the outstanding securities of the classes of SMC Group's equity securities that are described in this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,
Secretary.

[FR Doc. E7-25350 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28080; 812-13453]

The UBS Funds, et al.; Notice of Application

December 19, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1-2(a) under the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on rule 12d1-2 under the Act to invest in certain financial instruments.

Applicants: The UBS Funds, SMA Relationship Trust, UBS Investment Trust, UBS Index Trust, UBS Series Trust, and UBS Relationship Funds (collectively, the "Trusts"); UBS Global Asset Management (Americas) Inc. (the "Advisor"); and UBS Global Asset Management (US) Inc. ("UBS Global AM (US)").

Filing Dates: The application was filed on November 23, 2007, and amended on December 14, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, c/o Mark F. Kemper, UBS Global Asset Management (Americas) Inc., One North Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551-6919, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0104 (telephone (202) 551-8090).

Applicants' Representations

1. Each Trust organized as a Delaware statutory trust or a Massachusetts business trust and is registered under the Act as an open-end management

investment company. The Trusts offer separate series ("Funds") that may invest in other registered investment companies in reliance on section 12(d)(1)(G) of the Act and rule 12d1-2 under the Act ("Underlying Funds").¹ Applicants propose that the Funds be permitted to invest in futures contracts, options on futures contracts, swap agreements, derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments") in addition to the Underlying Funds.²

2. The Advisor is a Delaware corporation and an indirect, wholly-owned subsidiary of UBS AG, an internationally diversified organization with operations in many aspects of the financial services industry. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds. UBS Global AM (US), also a Delaware corporation and an indirect, wholly-owned subsidiary of UBS AG, is registered as a broker-dealer under the Securities Exchange Act of 1934 Act ("Exchange Act") and serves as the principal underwriter to The UBS Funds, SMA Relationship Trust, UBS Investment Trust, UBS Index Trust, and UBS Series Trust.

Applicants' Legal Analysis

Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to

¹ Applicants request that the relief apply to all existing and future series of the Trusts and all other management investment companies and their series registered under the Act that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts. All Funds that currently intend to rely on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

² As part of its strategy to invest in securities, Other Investments and Underlying Funds, an Applicant Fund also may, pursuant to rule 12d1-2 under the Act, invest in securities issued by another registered investment company that is not in the same group of investment companies as the Fund (a "Non-Group Fund") consistent with section 12(d)(1)(A) or 12(d)(1)(F) of the Act.

another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provisions of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Funds may

invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the appropriate Fund, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any Underlying Fund or any Non-Group Fund in which the Fund may invest. Such findings, and the basis upon which the findings are made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-25378 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57021; File No. SR-ISE-2007-116]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Open the Exchange's Equity Trading Platform at 9 a.m.

December 20 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on December 14, 2007, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to allow the Exchange to open the ISE Stock Exchange at 9 a.m. without regard to whether the primary market in a particular security is open and to make other associated changes to its rules. The text of the proposed rule change is available at ISE's principal office, the Commission's Public Reference Room, and <http://www.ise.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a Pre-Market Session for the trading of equity securities. The proposed Pre-Market Session will start at 9:00 a.m. and conclude when a security is opened for trading according to the existing procedures contained in ISE Rule 2106. Under Rule 2106, the Exchange currently opens securities for trading on the ISE Stock Exchange following the

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

first trade on the primary market for New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") listed securities, and following the first reported national best bid and offer ("NBBO") for Nasdaq and NYSE Arca listed securities. Generally, this means that the ISE Stock Exchange opens Nasdaq and NYSE Arca securities at 9:30 a.m. and opens NYSE and Amex securities after the first trade in a security, which occurs at or after 9:30 a.m. The proposed Pre-Market Session would not change the way in which the ISE Stock Exchange currently opens its regular trading session.⁵

The Exchange proposes to add a Pre-Opening Order to accommodate trading in the Pre-Market Session. A Pre-Opening Order is an order that is eligible for execution during Pre-Market Session trading. Unexecuted Pre-Opening Orders will become Day Orders upon commencement of the Regular Market Session. Equity EAMs that submit orders to the Pre-Market Session on behalf of non-members will be required to disclose the risks of participating in the Pre-Market Session to their customers, including the risk of: (1) lower liquidity;⁶ (2) higher volatility;⁷ (3) changing prices;⁸ (4) unlinked markets;⁹ (5) news

announcements;¹⁰ (6) wider spreads,¹¹ and (7) lack of calculation or dissemination of underlying index value or intra-day indicative value ("IIV").¹²

Under the proposal, the Pre-Market Session would operate the same as in the regular trading session, except that there would be no intermarket price protection for executions in the Pre-Market Session until 9:30 a.m. Because trading that occurs in the Pre-Market Session after 9:30 a.m. and until the security is opened in the regular market session will be subject to the requirements of Regulation NMS, starting at 9:30 a.m. the Pre-Market Session will protect incoming Pre-Opening Orders from trading through Protected Quotations¹³ on other markets. Similarly, Regulation NMS will prohibit other markets from trading through ISE's quotes starting at 9:30 a.m. To accommodate the needs of these other markets to comply with Regulation NMS, we will execute incoming orders marked as intermarket sweep orders and orders marked as immediate-or-cancel in the Pre-Market Session starting at 9:30 a.m. even though they may not be marked as Pre-Opening Orders.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5),¹⁴ in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal will provide an opportunity for investors to begin trading equity securities before the primary market opens with proper disclosure of the risks involved in doing so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶ Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ Rule 19b-4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

⁵ The Exchange will continue to accept orders for the regulatory trading session beginning at 7 a.m., and will continue to perform the current midpoint opening transaction for such orders received prior to the opening. When the primary market is either the NYSE or the Amex, the opening trade will continue to be executed at the midpoint of the first reported NBBO subsequent to a reported trade on the primary market after 9:30 a.m. When the primary market is Nasdaq or NYSE Arca, the opening trade will continue to be executed at the midpoint of the first reported NBBO after 9:30 a.m.

⁶ There may be lower liquidity in Pre-Market hours trading as compared to regular market hours. As a result, an order may only be partially executed, or not at all.

⁷ There may be greater volatility in Pre-Market hours trading than in regular market hours. As a result, an order may only be partially executed, or not at all, or the price received may be an inferior price in Pre-Market hours trading compared to what would have been received during regular markets hours.

⁸ The prices of securities traded during Pre-Market hours may not reflect the prices either at the end of regular market hours, or upon the opening of the next morning. As a result, an order may receive an inferior price in Pre-Market hours trading compared to what would have been received during regular markets hours.

⁹ The prices displayed on a particular Pre-Market hours system may not reflect the prices in other concurrently operating Pre-Market hours trading systems dealing in the same securities. Accordingly, an order may receive an inferior price in one Pre-Market hours trading system compared to the price the order would have received in another Pre-Market hours trading system.

¹⁰ In Pre-Market hours trading, news announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

¹¹ Lower liquidity and higher volatility in Pre-Market hours trading may result in wider than normal spreads for a particular security.

¹² Since the underlying index value and/or IIV of a derivative security may not be calculated or widely disseminated during the Pre-Market hours, an investor who is unable to calculate implied values for such products during Pre-Market hours may be at a disadvantage to market professionals.

¹³ See ISE Rule 2100(c)(16).

¹⁴ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2007-116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-116 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-25356 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57022; File No. SR-Amex-2007-138]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Establish a New Class of Off Floor Market Makers in ETFs Called Designated Amex Remote Traders

December 20, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF securities that trade on the Exchange, including the implementation of related changes to the Exchange's AEMI trading platform. These market makers, to be called "Designated Amex Remote Traders" or "DARTs," will electronically enter competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. Business requirements will include minimum performance standards with respect to each assigned security that a DART trades. The purpose of the new program is to (1) encourage competitive quoting within the Amex and between the Amex and other market centers, (2) retain and increase order flow by attracting new market makers to the Exchange, and (3) encourage greater depth at or around the national best bid or offer ("NBBO").

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, at the Amex's Principal Office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to (1) encourage competitive quoting within the Amex and between the Amex and other market centers, (2) retain and increase ETF order flow in AEMI by attracting new market makers to the Exchange, and (3) encourage greater depth at or around the NBBO, the Exchange proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF securities that trade on the Exchange, including the implementation of related changes to the Exchange's AEMI trading platform. These market makers, to be called "Designated Amex Remote Traders" or "DARTs," will electronically enter competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. DARTs will also have to meet certain business requirements, which will include minimum performance standards as discussed below. The Exchange anticipates that the implementation of the DARTs program should increase the liquidity available in those ETF securities to which DARTs are assigned and reduce the likelihood of tolerance breaches in AEMI due to the resultant additional depth at or around the NBBO.

This proposed rule change replaces a similar proposed rule change for a DARTs program at the Exchange that was recently approved by the Commission.³ The earlier approved rule change was deleted in a subsequent rule filing by the Exchange⁴ in order to allow consideration of certain Amex equity Specialists' comments on the DARTs program that were received but

³ See Securities Exchange Act Release No. 56446 (Sept. 17, 2007), 72 FR 54303 (Sept. 24, 2007) (approving File No. SR-Amex-2007-85).

⁴ See Securities Exchange Act Release No. 56764 (Nov. 7, 2007), 72 FR 64095 (Nov. 14, 2007) (File No. SR-Amex-2007-113).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁸ 17 CFR 200.30-3(a)(12).

inadvertently overlooked by the Commission.⁵ In the instant filing, the Exchange responds to a number of the issues raised by the Comment Letter. In addition, the proposed rule change contains certain differences from the previously approved rule change for the DARTs program. The most significant difference is that the DARTs program as proposed herein is limited to ETF securities, in contrast to the Exchange's earlier rules which would have allowed DARTs in equity securities as well. The Exchange has determined that the implementation of DARTs for equities requires substantially greater time and effort than that required for ETFs alone, in part due to the substantially different treatment of Crowd Orders in the Exchange's priority and parity rules for equities and for ETFs.⁶ Consequently, the Exchange believes that it should focus its initial efforts on creating a DARTs program for ETFs.

DARTs will be members or member organizations physically located off-floor that will electronically enter competitive quotations into AEMI on a regular basis in all ETF securities to which they are assigned in the DARTs program. The proposed DARTs program is similar to the Supplemental Registered Options Traders ("SROT") program implemented by the Amex for options,⁷ with its own unique caveats. Under the DARTs proposal, Amex Specialist firms may also be DARTs, although they may not be registered as such in securities in which they are also the Specialist. DARTs will trade in an identical way as Registered Traders in the same ETF securities on the Exchange when auto-ex is on, with similar obligations under Exchange rules such as those relating to a course of dealings that contributes to the maintenance of a fair and orderly market.

Due to their lack of a physical presence in the trading crowd, which is

a basic requirement of the auction market, DARTs will not participate in any post-trade allocation in connection with an auction trade. Instead, a DART's participation in an auction pair-off on the Exchange will be limited to the marketable amount of its quotation on the AEMI Book at the time of the pair-off. For example, suppose the breach of a Tolerance has occurred (disabling auto-ex as provided in Rule 128A—AEMI) due to a large incoming buy order that leaves an imbalance of 100,000 shares of XYZ ETF to be executed. Assume that a DART in that security is offering 10,000 shares at \$9.90, 10,000 shares at \$9.95, and 5,000 shares at \$10.10. If the Specialist sets the auction price at \$10.00 and there are marketable sell orders/offers on the AEMI Book at that price for 70,000 shares (including the 10,000 shares offered by the DART at \$9.90 and the 10,000 shares offered at \$9.95), all of those shares would execute against the imbalance, leaving the remaining 30,000 shares for the post-trade allocation. Even though the DART has a remaining offer of 5,000 shares on the contra side of the aggressing order, he would not be considered an "active crowd participant" for purposes of the post-trade allocation and cannot therefore elect to participate in the disposition of the remaining 30,000 shares.

Amex will establish minimum requirements for a DART to remain in the program, which may be modified by the Exchange from time to time. First, a DART must provide competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements.⁸ Business requirements will include minimum performance

⁸ See proposed Rule 110A—AEMI(b)(i), which requires DARTs to "provide continuous two-sided quotations in all assigned securities * * *." This basic market maker requirement mirrors the definition of "market maker" set forth in Section 3(a)(38) of the Act, which requires a dealer in the security involved to hold himself out "as being willing to buy and sell such security for his own account on a regular or continuous basis." The following additional regulatory requirements will be imposed by proposed Rule 110A—AEMI(b)(ii): "With respect to each security to which he/she is assigned by the Exchange, a DART's transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In connection with this function, a DART is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his/her own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for the security(ies) in which he/she is trading, or a temporary distortion of the price relationships between the security(ies) in which he/she is trading and the security(ies) underlying or otherwise related to such security(ies)."

standards determined from time to time by the Exchange, including volume participation rate and trade participation rate. A DART that fails to comply with one or more of the performance standards, as determined by the Chief Executive Officer of the Exchange or his/her designee, may be subject to loss of all or a portion of any benefits to which they would otherwise be entitled under Amex rules by virtue of its status as a DART, including possible suspension or termination of DART status. A DART may be either a regular member of the Exchange or an associate member of the Exchange that meets the requirements for electronic access to the Exchange's automated systems. The number of ETF securities in which a DART may be permitted to make markets will be determined by the Exchange in accordance with Commentary .05 in proposed Rule 110A—AEMI.

The Exchange expects that the proposed rules for the DARTs program will set a high bar for prospective DART participants, and, while management anticipates starting the program with a limited group of DARTs, no specific upper limit on the number of DARTs is anticipated. In addition to the requirements described above, DARTs shall be required to meet eligibility criteria similar to those specified in the SROT program, which criteria will include:

- Adequacy of resources including capital, technology and personnel;
- history of stability, superior electronic capacity, and superior operational capacity;
- level of market-making and/or specialist experience in a broad array of securities;
- ability to interact with order flow in all types of markets;
- existence of order flow commitments;
- willingness and ability to make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the ETF securities it trades;
- the number of member organizations requesting approval to act as a DART; and
- ability to transact in any ETF underlying markets.

The Exchange would use the factor relating to the existence of order flow commitments to evaluate existing order flow commitments between a DART applicant and order flow providers. A future change to, or termination of, any such commitments would not be used by the Exchange at any point in the

⁵ See letter dated September 5, 2007 to Nancy M. Morris, Secretary, Commission, from Brendan E. Cryan, Managing Member, Brendan E. Cryan & Company, LLC; Jonathan Q. Frey, Managing Partner, J. Streicher & Co., Michael Marchisi, Managing Partner, AIM Securities Co.; and Robert B. Nunn, Chief Operating Officer, Cohen Specialist, LLC ("Comment Letter").

⁶ In general, under Rule 126—AEMI (Precedence of Bids and Offers), after giving priority to customer orders, the ETF portion of the rule establishes parity between the Specialist quote, non-customer Crowd Orders (which would include quotes from DARTs), and non-customer public orders (with the latter treated as a group for the initial parity allocation). In contrast, the equity portion of the rule requires the Specialist quote to yield to public orders, as well as any Crowd Orders (including quotes from DARTs) to the extent such Crowd Orders are in parity with the public orders.

⁷ See Amex Rule 993—ANTE (Supplemental Registered Options Traders).

future to terminate or take remedial action against a DART. Furthermore, the Exchange would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. The factor relating to willingness to promote the Exchange includes assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other similar activities. The Exchange would use this criterion to determine which applicants would best be able to enhance the competitiveness of the Exchange. The Exchange would not apply this factor to in any way restrict, either directly or indirectly, a DART's activities as a market maker or specialist on other exchanges, or to restrict how a DART handles orders it holds in a fiduciary capacity to which it owes a duty of best execution.

The regulatory requirements applicable to DARTs will be surveilled for by the FINRA Amex Regulation Division ("FINRA Amex") consistent with current surveillance procedures for Registered Traders on the Exchange. FINRA Amex staff will work with Amex technical staff on planning the necessary changes to AEMI to capture required surveillance data and in surveilling the increased number of market makers that the program is expected to attract. Adjustments to current technology and surveillance procedures will likely also be necessitated by the fact that the DARTs will not be physically located on the floor of the Exchange.

DARTs will interface with the Amex's Floor Officials in the case of trade disputes substantially in accordance with existing procedures used for SROT's, another off-floor market participant. DARTs accordingly will be required to designate persons on- and/or off-floor to be in direct real-time contact with Floor Officials on such matters.⁹

⁹In accordance with the current Amex service desk written procedures manual, SROT's have floor representation through their affiliated member firm or clearing entity. Service desk personnel have direct contact with the SROT's by telephone and e-mail. An SROT can request a trade review under obvious error rules through initial contact with the service desk, which will take specified follow-up steps. The service desk serves as the liaison between the SROT and floor activity, and in all situations requiring involvement by the Trading Floor Regulatory Liaison Group and a Floor Official. The service desk, in a customer service capacity, will present all data and communicate the SROT requests and follow-up detail to the appropriate parties. Documentation associated with corrective actions and/or floor rulings is presented to the

Regulation M will apply to DARTs in the same way that it applies to any other market participants, as will Amex Rule 193 to the extent the DART is affiliated with a Specialist member organization. However, no expansion of the application of Amex Rule 193 beyond current practice is intended.¹⁰

Finally, the Comment Letter had observed that a provision in previously proposed Rule 110A-AEMI(a) relating to minimum capital requirements for DARTs is unnecessary due to its current inapplicability to DARTs (who will be subject to the Commission's net capital rule).¹¹ The Exchange has eliminated the provision from the rule change proposed herein.

The specific AEMI rules to which changes are being proposed are discussed below.

Rule 110A-AEMI

Designated Amex Remote Traders

This proposed new rule will contain the basic requirements for DARTs as described herein, in the same manner that Rule 110-AEMI contains the basic requirements for Registered Traders.

Rule 1A-AEMI

Applicability, Definitions, References and Phase-In

The Exchange is proposing revisions to Rule 1A-AEMI in order to (1) update the definition of the AEMI Book to include electronic submissions from DARTs, (2) provide that a Crowd Order includes any bid or offer in the AEMI Book entered by a DART, (3) provide a definition of a DART with a cross-reference to proposed Rule 110A-AEMI, (4) update the definition of the

SROT's on-floor representation for signature/stamp of approval and relevant documentation is recorded and saved. In situations involving clearly erroneous transactions or other events involving the SROT (although not initiated by the SROT), the Amex service desk will contact the SROT by phone or e-mail to provide notification of a possible dispute involving one or more SROT trades.

A similar provision relating to DARTs will be added to the manual. However, Amex has recently received Commission approval of a proposed rule change making an on-floor presence to resolve trade disputes optional, with an off-floor presence to resolve disputes mandatory. Consequently, corresponding changes will be made to the above-referenced manual provisions. See Securities Exchange Act Release No. 56882 (December 3, 2007), 72 FR 69261 (December 7, 2007) (approving File No. SR-Amex-2007-56).

¹⁰The language in Rule 110A-AEMI(c)(ii) cross-referencing Amex Rule 193 is substantively identical to language also contained in Amex Rules 993-ANTE(d)(iii) (Supplemental Registered Options Traders) and 994-ANTE(d)(iii) (Remote Registered Options Traders), neither of which have been interpreted to expand the applicability of Amex Rule 193 beyond affiliates of Specialists.

¹¹Rule 15c3-1 under the Act, 17 CFR 240.15c3-1.

Specialist Order Book to exclude bids and offers of DARTs, and (5) make a minor unrelated correction to the definition of Exchange Traded Funds ("ETFs").

Rule 109-AEMI

"Stopping" Stock

The Exchange proposes to revise Rule 109-AEMI to add DARTs to the list of Amex market participants prohibited from granting or accepting a stop with respect to a security traded in AEMI.

Rule 112-AEMI

Suspension of Registration of Registered Trader or Designated Amex Remote Trader

The Exchange is proposing to add a provision to this rule to provide for the suspension of the registration of a DART under circumstances similar to the current provision that provides for the suspension of a Registered Trader. Both types of participants are market makers with respect to securities traded in AEMI.

Rule 115-AEMI

Exchange Procedures for Use of Unusual Market Exception

The Exchange proposes to revise Rule 115-AEMI to provide procedures that will cover situations in which a DART is unable to publish quotations or is streaming in incorrect quotes under unusual market conditions. The Exchange also is proposing to correct an inaccuracy in the current rule in order to clarify that such issues with respect to Registered Traders are handled via the Service Desk and not by a Floor Official.

Rule 123-AEMI

Manner of Bidding and Offering

The Exchange is proposing revisions to this rule to provide that AEMI shall accept electronic bids and offers from DARTs and include them in the AEMI Book. The proposed changes would also place DARTs on a par with Specialists and Registered Traders in terms of their ability to stream bids and offers into AEMI at multiple price levels (with the maximum number being changed from five to four to reflect current AEMI system capabilities) and would require (as with Specialists and Registered Traders) that all quotes provided be two-sided. A DART would also be prohibited from streaming in a quote that locks or crosses an existing quote that the same DART has previously streamed in for the same security.

Rule 128A-AEMI

Automatic Execution

The Exchange is proposing two minor changes to Rule 128A-AEMI so that DARTs will be treated in the same manner as Registered Traders in connection with certain automatic executions when a DART's quotation (1) matches the APQ on the other side of the market or (2) would lock or cross the APQ in certain circumstances.

Rule 128B-AEMI

Auction Trades

The changes being proposed to this rule would exclude DARTs from participation in any post-trade allocation in connection with an auction, as described above.

Rule 719-AEMI

Comparison of Exchange Transactions

The Exchange is proposing to add DARTs to one of the equity account type codes used for market maker transactions in the AEMI securities in which they are registered.

Rule 957

Accounts, Orders and Records of Registered Traders, Designated Amex Remote Traders, Specialists and Associated Persons

The Exchange is proposing changes to Rule 957 that will place the same requirements on DARTs that Registered Traders are subject to with respect to reporting certain trading accounts and orders to the Exchange and producing books, records and other information pertaining to certain transactions.

2. Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that a substantial portion of the Comment Letter on the Exchange's earlier rule filing on DARTs was devoted to business-side critiques of how best to allocate Amex resources to craft a market structure that will best ensure Amex's future success. The suggestion was made that adding DARTs to the Amex would somehow degrade market quality and injure Amex's competitive position. However, Amex management believes that, in the post-Regulation NMS world, it is essential that the Exchange's existing structure be enhanced by the introduction of additional quoting participants, while preserving those aspects of the Specialist system that order flow providers still value. Combined with other changes to Amex's market structure, Amex management believes that the addition of DARTs will create additional resident liquidity at the Amex needed to better compete with other trading centers for order flow.

Further, the Exchange notes that most of the concerns expressed in the Comment Letter regarding the potential negative impact of the DARTs program on competition seemed focused on preventing the introduction of competitive market makers into the marketplace for equities, as opposed to the marketplace for ETFs in which market makers (Registered Traders) already participate.¹⁴ Now that the proposed scope of the DARTs program is limited to ETFs only, such concerns—with which the Exchange takes strong issue in any event—are moot. Other statements in the Comment Letter regarding the stabilization rules are moot for the same reason.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

As noted in Section II.A.(1) above, the Comment Letter was the only comment letter received on the Exchange's earlier DARTs rule filing that relates to the substance of the rule change proposed herein, and the Exchange has addressed herein a number of issues raised in that letter.

¹⁴ For example, the Comment Letter at page 2 states, "This business as usual approach entirely ignores the fact that Registered Traders are not allowed to make markets in equities, which DARTs would be entitled to do should the Proposal be approved" and "we believe that the introduction of market makers into the Exchange's equity marketplace raises a number of significant concerns." In addition, the Comment Letter at page 3 states, "While it is true that the Proposal appears to leave the role of equity specialists unchanged, the introduction of market makers, whether they act from on or off-floor, into the Amex's equity marketplace, is clearly duplicative of the specialist function."

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-138 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-138. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-138 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-25351 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57030; File No. SR-Amex-2007-135]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Section 107D(g) of the Amex Company Guide

December 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 7, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been substantially prepared by Amex. The Exchange has filed the proposal pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 107D(g) of the Amex *Company Guide* (the "*Company Guide*") to create a limited exception to the requirement that 90% of an index's numerical value

underlying an issuance of index-linked securities ("Index Securities") and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading on a national securities exchange. This exception will apply only when (i) no underlying component security represents more than 10% of the dollar weight of the index and (ii) the index has a minimum of 20 components.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to provide a limited exception to the requirement set forth in section 107D(g)(v) of the *Company Guide* requiring that 90% of an underlying index's numerical value and at least 80% of the total number of component securities meet the criteria for standardized options trading set forth in Amex Rule 915. In connection with foreign-based indexes, this requirement essentially prohibits the use of the generic listing standard for Index Securities that are linked to, or based on, the performance of a foreign or international index. The Exchange submits that this was not the intention of the generic listing standard, and therefore, proposes a limited exception to the options eligibility requirement for component securities of an underlying index. We believe this proposed rule change will permit a number of foreign or international indexes to be the subject of Index Securities listed and traded on the Exchange.

Section 107D of the *Company Guide* provides generic listing standards to permit the listing and trading of Index

Securities pursuant to Rule 19b-4(e) under the 1934 Act.⁵ As a result, the Exchange may list Index Securities based on an index or indexes (the "Underlying Index") that meet the criteria set forth in paragraph (g) of section 107D of the *Company Guide*. Specifically, an Underlying Index is required to either be (i) an index meeting the specific criteria set forth in Section 107D(g); or (ii) an index previously approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the 1934 Act and rules thereunder.

The application of Amex Rule 915 in connection with foreign-based indexes is especially problematic as a result of the requirement in the Rule that requires an underlying security to be duly registered and be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (the "1934 Act").⁶ In addition, the issuer of an underlying foreign security is unlikely to be able to comply with all applicable requirements of the 1934 Act as required by Rule 915.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options. These criteria relate primarily to the distribution and trading volume of the securities underlying an option⁷ and, as such, are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Index Securities set forth in section 107D(g)(i) and (ii). The Exchange notes that the requirement of section 107D(g) that a component included in a securities index must have had a trading volume of at least 1,000,000 shares per month over the most recent six month period⁸ is significantly more stringent

⁵ See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

⁶ NMS stock is defined as an "NMS security" other than an option. "NMS security" is defined as any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan other than options. In addition, although foreign securities may meet the minimum market capitalization and trading volume requirements, the other criteria set forth Rule 915 will be difficult for foreign securities to comply with.

⁷ The rules require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of 2,400,000 in the preceding 12 months and a market price of at least \$3.00 per share for securities that are "covered securities" as defined in Section 18(b)(1)(A) of the Securities Act of 1933 and a market price of \$7.50 for securities that are not "covered securities."

⁸ Except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume must be at least 500,000 shares per month in each of the last six months.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

than the requirement of the options rules that the security have a trading volume of 2,400,000 shares over a twelve month period. However, while a significant number of securities meet the minimum market capitalization and trading volume requirements for components of securities indexes under section 107D(g), many do not meet the current criteria for standardized options trading. The Exchange believes that the explicit market capitalization and trading volume requirements of section 107D(g) are sufficient to ensure that any security underlying a series of Index Securities will have a liquid trading market. In addition, the proposed enhanced concentration limits and minimum number of components that would need to be met by an issuer in order to avail itself of the proposed exemption would significantly reduce the possibility of manipulation of the index. Based on the foregoing, the Exchange believes that the added protection of requiring that such securities be qualified for options trading is unnecessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) Act¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the

protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiver will permit the Exchange to implement the proposed rule change as soon as possible thereby permitting potential issuers to avail themselves of the revised listing criteria. In addition, the Commission notes that it has recently approved a proposal by another Exchange, which included identical rule text to that proposed by Amex.¹⁵ For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹⁶

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to grant the Exchange's request to waive the five-day pre-filing notice requirement.

¹⁴ *Id.*

¹⁵ See Securities Exchange Act Release No. 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (NYSEArca-2007-110).

¹⁶ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-135. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-135 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Nancy M. Morris,
Secretary.

[FR Doc. E7-25374 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

¹⁷ 17 CFR 200.30-3(a)(12).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57036; File No. SR-CHX-2007-27]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend its Rule 25 To Eliminate a Requirement That a Participant Have a Formal Written Agreement To Use Another Participant's Give-Up

December 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 12, 2007, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Rule 25 to eliminate a requirement that a participant have a formal written agreement to use another participant's give-up.³ The text of this proposed rule change is available at the Exchange's Web site, <http://www.chx.com>, the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When the CHX developed rules for its new trading model, it included a provision that requires a participant that executes a trade using another participant's give-up to have a written agreement authorizing the use of the give-up. The rule mirrors similar requirements in some other automated systems—it is designed to provide a measure of additional assurance that orders will clear and settle, even when they are submitted from remote locations, by firms that do not know each other.

Soon after implementing its new trading model, the Exchange filed a proposal to limit the way in which the rule would apply to its institutional brokers.⁴ Specifically, the Exchange sought to incorporate a new interpretation and policy that would confirm that institutional brokers could use other participants' give-ups in accordance with reasonable written order-handling procedures, without specifically requiring that a written agreement be in place. The Exchange noted in that filing that, while it believed that the rule provided an appropriate general standard, it was not intended to require a potentially substantial change in the long-standing business practices of the Exchange's institutional brokers, who often execute a trade using another participant's give-up, pursuant to instructions from such participant or its customer.

Upon further reflection, the Exchange now proposes to eliminate the "give-up agreement" rule altogether. The Exchange continues to believe that the rule sets a good business standard, but does not believe that it is appropriate to put a hard-and-fast rule to that effect in place because of its potential impact on the day-to-day business practices of some of its institutional brokers.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁵ in general, and with Section 6(b)(5) of the Act⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the

mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest by allowing firms to develop their own business practices in connection with the execution of formal written agreements with the firms that send them orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2007-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2007-27. This file

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See e-mail from Ellen Neely, President and General Counsel, CHX, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated December 20, 2007 (defining a "give-up" as a multi-character symbol that identifies a CHX participant firm. In the context of this rule, if a participant executes a trade using another participant's give-up, the firm is identifying the other firm as a party to the trade and allocating the trade to the other firm's account for clearing).

⁴ See File No. SR-CHX-2006-36. The Exchange has withdrawn this proposal.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2007-27 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

[FR Doc. E7-25373 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57033; File No. SR-FINRA-2007-036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Make Technical Amendments to the Uniform Application for Securities Industry Registration or Transfer ("Form U4"), the Uniform Termination Notice for Securities Industry Registration ("Form U5") and the Uniform Branch Office Form ("Form BR")

December 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 18, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by FINRA. FINRA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to make technical amendments to the Uniform Application for Securities Industry Registration or Transfer ("Form U4"), the Uniform Termination Notice for Securities Industry Registration ("Form U5") and the Uniform Branch Office Form ("Form BR") (hereinafter referred to as "Forms").⁵ The technical amendments, among other things, reflect NASD's change in corporate name to FINRA and update the current list of self-regulatory organizations ("SROs"), government jurisdictions and registration categories listed on the Forms. The proposed revised Forms are available at FINRA, and the Commission's Public Reference Room. FINRA is not proposing any changes to rule text with the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B,

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will make technical amendments to the Forms. First, the Forms will be amended to reflect changes in certain SRO names. In particular, references to NASD in the Forms will be replaced with references to FINRA, as appropriate.⁶ The SRO registration sections of the Forms U4 and U5 also will be amended to: (1) Add "NQX," the acronym for the Nasdaq Stock Market LLC, which was approved by the Commission as a national securities exchange on January 13, 2006;⁷ and (2) reflect the name change of the Pacific Exchange, Inc. to NYSE Arca, Inc. by replacing "PCX" with "ARCA."⁸

Second, FINRA is proposing to amend Section 5 and Section 5B of the Forms U4 and U5, respectively, to update the list of government jurisdictions participating through the Central Registration Depository (CRD[®]) to include the U.S. Virgin Islands, which joined the CRD[®] system as a participating jurisdiction earlier this year. FINRA also is making conforming changes to the definition of "jurisdiction" to include the U.S. Virgin Islands. The SEC added the U.S. Virgin Islands as a jurisdiction on Forms BD and BDW in technical amendments to those forms in April 2007.⁹

Finally, FINRA is proposing to update the list of examination and registration categories to include: (1) MM—Market Maker Authorized Trader—Options (S44); (2) OT—Authorized Trader; and

⁶ FINRA was created on July 30, 2007 through the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation.

⁷ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁸ See Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (File No. SR-PCX-2006-24) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Change the Names of the Pacific Exchange, Inc., PCX Equities, Inc., PCX Holdings, Inc., and the Archipelago Exchange, L.L.C.).

⁹ See Securities Exchange Act Release No. 55643 (April 19, 2007) 72 FR 20223 (April 24, 2007) (Technical Amendments to Form BD and Form BDW) ("Release"). In Footnote 6 of the Release, the SEC stated that adding the U.S. Virgin Islands to Forms BD and BDW will "facilitate the use of these forms by broker-dealers and would eliminate the need for separate paper filings of registration forms by broker-dealers in the United States Virgin Islands." Similarly, the proposed changes to the Forms will enable firms to register their associated persons electronically through CRD.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Representatives of broker-dealers, investment advisers or issuers of securities must use the Form U4 to become registered in the appropriate jurisdictions and/or with appropriate SROs. The Form U5 is used to terminate the registration of an individual in the various SROs and jurisdictions. The Form BR is used by broker-dealers and investment advisers for branch office registration, notification, closing or withdrawal.

⁷ 17 CFR 200.30-3(a)(12).

(3) MT—Market Maker Authorized Trader—Equities (S7).¹⁰ FINRA is proposing to remove the SF—Single Stock Futures (S43) registration category and the Series 43 examination option in Section 7 of Form U4 and Section 5A of Form U5,¹¹ as the category and examination were not developed by FINRA (then NASD); continuing education requirements have been deemed sufficient for registrants engaging in securities futures business.¹² FINRA also is proposing to remove the Series 12 examination, which was rescinded by the NYSE in May 2007.¹³

FINRA is filing this proposed rule change for immediate effectiveness. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*. FINRA anticipates that the amended Forms will be available in February 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA is amending the Forms to, among other things, reflect its new corporate name and update the currently out-of-date list of SROs, government jurisdictions and registration categories listed in the Forms.

¹⁰ See Securities Exchange Act Release No. 55446 (March 12, 2007), 72 FR 13155 (March 20, 2007) (SR-NYSEArca-2006-51) (Order Granting Approval of Propose Rule Change Relating to Amendments to Registration Rules of NYSE Arca, Inc.).

¹¹ Commission corrected reference to where the removal of the reference to SF—Single Stock Futures (S43) registration category occurs in Form U5.

¹² See Securities Exchange Act Release No. 48932 (December 16, 2003), 68 FR 74674 (December 24, 2003) (SR-NASD-2003-186) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Administration of Qualification Examinations on Security Futures). See also Securities Exchange Act Release No. 54617 (October 17, 2006), 71 FR 62498 (October 25, 2006) (SR-NASD-2006-118) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Date by Which Eligible Registrants Must Complete Firm—Element Continuing Education to Qualify to Engage in a Securities Futures Business).

¹³ See Securities Exchange Act Release No. 55670 (April 25, 2007), 72 FR 24350 (May 2, 2007) (SR-NYSE-2007-41) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the Securities Manager Examination (Series 12)).

¹⁴ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

FINRA has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2007-036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2007-036 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Nancy M. Morris,
Secretary.

[FR Doc. E7-25370 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57032; File No. SR-ISE-2007-73]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of the Short Sale "tick" and Price Tests

December 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

¹⁷ 17 CFR 200.30-3(a)(12).

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 21, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On October 26, 2007, ISE filed Amendment No. 1 to the proposed rule change.³ The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various ISE rules to conform to recent SEC amendments to Rule 10a-1 under the Act and Regulation SHO that eliminated SEC and self-regulatory organization ("SRO") short sale "tick" and price tests. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.ise.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of Amendment No. 1 to this filing is to amend the proposed rule text to: (1) Allow for the execution of short sale orders during the opening

process; (2) correct an incorrect cross reference to a Regulation SHO provision; and (3) to remove the text proposing to delete a provision of Rule 2129 (MidPoint Match).

On June 13, 2007, the SEC voted to adopt amendments to Rule 10a-1 under the Act and Regulation SHO to remove the "tick" test of Rule 10a-1 and any short sale price test of any SRO. As a result of the SEC's action, the ISE is seeking to conform its rules accordingly by rescinding ISE Rules 1407, which governs short sale transactions in Nasdaq Securities, and 2113(a) and (b), which contains a "tick" test applicable to short sales effected on the ISE, as well as to make conforming "housekeeping" changes to certain other rules. The Exchange proposes to remove references to the execution of short sale orders, as well as remove the "short exempt" marking requirements from the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(5)⁶ in particular in that the Exchange's proposed rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder because it does not: (1) Significantly affect the

protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. At any time within sixty (60) days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay period for "non-controversial" proposals under Exchange Act Rule 19b-4(f)(6) and make the proposed rule change effective and operative upon filing with the Commission. The Commission believes such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms ISE rules to currently effective Commission rules.⁹ For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2007-73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 supersedes and replaces the original filing in its entirety.

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ For purposes of waiving the 30-day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISE-2007-73 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Nancy M. Morris,
Secretary.

[FR Doc. E7-25369 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57001; File No. SR-NASDAQ-2007-099]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fee for Registering and Transferring Registration of Associated Persons

December 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 20, 2007, The NASDAQ Stock Market LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to

Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to charge fees for individual registration and transfer/re-licensing under Rule 7003(b). The proposed rule change is effective upon filing.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

(a) The following fees will be collected and retained by *FINRA* [NASD] via the Web CRD registration system for the registration of associated persons of Nasdaq members that are not also *FINRA* [NASD] members:

(1)–(6) No change.

(b) *The following fees will be collected via the Web CRD registration system for the registration of associated persons of Nasdaq members:*

(1) *\$55 for each initial Form U4 filed for the registration of a representative or principal.*

(2) *\$55 for each registration U4 transfer or re-licensing of a representative or principal.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to revise Rule 7003 and begin charging fees for registration

and transfer/re-licensing of individuals. Currently, Nasdaq is one of only a few self-regulatory organizations ("SROs") that charge membership application and renewal fees for firms, but does not charge fees for registered representatives.

Subsequent to the early 2006 transition of the Nasdaq Market Center as a facility of the Financial Industry Regulatory Authority, Inc. (f/k/a National Association of Securities Dealers, Inc.) to a facility of a new SRO, Nasdaq decided to limit membership fees to firm application, renewal, and trading rights charges. However, since then Nasdaq's market share in trading New York Stock Exchange securities has increased significantly and Nasdaq will also soon launch an options exchange. Both of these events create additional regulation expense that must be supported. Nasdaq believes that the new fees are warranted to ensure that fees for registered representatives fund a portion of the cost of regulating the Nasdaq market. Nasdaq believes that even with the new fees, registered representatives that are Nasdaq members will still generally pay less than or the same amount they pay to be registered representatives in other SROs.⁵

Nasdaq proposes to begin charging \$55 for individual initial registration and transfer/re-licensing on January 1, 2008.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the proposed Nasdaq membership fees for individual registration and transfer/re-licensing are a reasonable and equitable method of ensuring that registered representative fees funds a portion of the cost of regulating the Nasdaq market, and that the overall cost for registered representatives that are Nasdaq members is reasonable as compared with their cost of membership in other SROs.

⁵ See, http://www.finra.org/web/groups/reg_systems/documents/regulatory_systems/p005213.pdf.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-099. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2007-099 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-25354 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57035; File No. SR-NYSE-2007-117]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a New Non-Regulatory Trading Halt Condition Under Rule 123D Designated as "Investment Company Units or Index-Linked Securities"

December 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2007, the New York Stock Exchange, LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit

comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 123D to establish a new non-regulatory trading halt condition designated as "Investment Company Units or Index-Linked Securities." This condition may be used with respect to Investment Company Units (commonly known as exchange-traded funds ("ETFs")) and index-linked securities on or after January 1, 2008, to facilitate the closing of the trading room in which such securities are traded and the transfer of the listing of all such securities to NYSE Arca, Inc. ("NYSE Arca"). Any orders received by NYSE in a security subject to an "Investment Company Units or Index-Linked Securities" condition will be routed to NYSE Arca where they will be traded in accordance with the rules governing that market. The text of the proposed rule change is available on the NYSE's Web site at <http://www.nyse.com>, at the Office of the Secretary of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its strategic business planning, NYSE Euronext is seeking to move the listing and trading of all index-linked securities and ETFs from the Exchange to NYSE Arca by December 31, 2007. The Exchange has requested issuers of ETFs and index-linked securities to voluntarily delist those securities from NYSE and list them on NYSE Arca. The Exchange intends to close down the trading room in which ETFs and index-linked securities are traded on the Exchange

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

floor on December 31, 2007. Upon closing of this trading room, there will no longer be any trading posts on the Exchange floor equipped with the appropriate technology to enable specialists to make an effective market in ETFs or index-linked securities. As a consequence, the Exchange is concerned that, while all of the issuers of ETFs and index-linked securities have agreed to such transfer, the transfer of a small number of ETFs and index-linked securities may not have been completed by December 31, 2007.

To avoid the excessive cost involved in keeping the trading room open for a very small number of securities, the Exchange proposes to amend Rule 123D to establish a new non-regulatory trading halt condition designated as "Investment Company Units or Index-Linked Securities." This condition may be used with respect to ETFs or index-linked securities on or after January 1, 2008, to facilitate the closing of the trading room in which such securities are traded and the transfer of the listing of all such securities to NYSE Arca. On or after January 1, 2008, any ETFs or index-linked securities that remain listed on NYSE will be subject to a trading halt pursuant to the Rule 123D "Investment Company Units or Index-Linked Securities" condition. Any orders received by NYSE in a security subject to this condition will be routed to NYSE Arca where the securities will be traded in accordance with the rules governing that market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)⁶ thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, in light of NYSE's plan to close the trading room on December 31, 2007, the proposed non-regulatory trading halt condition will ensure that those securities that have not transferred to NYSE Arca will continue to have an effective market.⁸ The Commission notes that these securities would continue to trade on a national securities exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁹

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

⁸ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-117 and should be submitted on or before January 22, 2008.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Nancy M. Morris,
Secretary.

[FR Doc. E7-25376 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57029; File No. SR-NYSEArca-2007-68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Trade Shares of the GreenHaven Continuous Commodity Index Fund Pursuant to Unlisted Trading Privileges

December 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 16, 2007, NYSE Arca, Inc. (“Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On December 21, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges (“UTP”) shares (“Shares”) of the GreenHaven Continuous Commodity Index Fund (“Fund”) pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange’s principal office, and the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust-issued receipts (“TIRs”) investing in shares or securities (“Investment Shares”) that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high-credit-quality short-term fixed income securities or other securities. The Exchange proposes to trade the Shares pursuant to UTP under Commentary .02 to NYSE Arca Equities Rule 8.200. The Shares represent beneficial ownership interests in the net assets of the GreenHaven Continuous Commodity Index Tracking Master Fund (“Master Fund”), consisting solely of the common units of beneficial interest (“Master Fund Units”). The Commission has approved a proposed rule change to list and trade the Shares on the American Stock Exchange LLC (“Amex”).³

The investment objective of the Fund and the Master Fund is to reflect the performance of the Continuous Commodity Total Return Index (“Index” or “CCI-TR”)⁴ over time, less the

expenses of the operations of the Fund and the Master Fund. The Fund will pursue its investment objective by investing substantially all of its assets in the Master Fund. The Master Fund will pursue its investment objective by investing in a portfolio of exchange-traded futures contracts (“Commodity Futures Contracts”) on the commodities comprising the Index (“Index Commodities”). The Master Fund will also hold cash and U.S. Treasury securities for deposit with the Master Fund’s Commodity Broker as margin and other high-credit-quality short-term fixed income securities. The Master Fund’s portfolio is managed to reflect the performance of the Index over time.⁵

The Master Fund will not be “actively managed,” but instead will seek to track the performance of the CCI-TR. To maintain the correspondence between the composition and weightings of the Index Commodities comprising the Index, GreenHaven Commodity Services LLC (“Managing Owner”)⁶ may adjust the portfolio on a daily basis to conform to periodic changes in the identity and/or relative weighting of the Index Commodities. The Managing Owner will also make adjustments and changes to the portfolio in the case of significant changes to the Index.

Dissemination and Availability of Information About the Underlying Index, Underlying Futures Contracts and the Shares

According to the Amex Proposal, Reuters is the owner, publisher, and custodian of CCI-TR, which represents a total return version of the ninth revision (as of 1995) of the original Commodity Research Bureau (CRB) Index. Values of the underlying Index are computed by Reuters and widely disseminated every 15 seconds during Amex’s trading hours, which correspond to the Exchange’s Core Trading Session.⁷ CCI-TR is calculated

oil, and natural gas. The Index is calculated to produce an unweighted geometric mean of the individual commodity price relatives, *i.e.*, a ratio of the current price to the base year average price. The base year for the CCI-TR is 1982, with a starting value of 100.

⁵ The Funds will not be subject to registration and regulation under the Investment Company Act of 1940 (“1940 Act”).

⁶ GreenHaven Commodity Services LLC, a Delaware limited liability company, will serve as the Managing Owner of the Fund and the Master Fund. The Managing Owner will serve as the commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) of the Fund and the Master Fund. The Managing Owner is registered as a CPO and CTA with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).

⁷ The Shares will trade on the NYSE Arca Marketplace as set forth in NYSE Arca Equities Rule 7.34(a), which provides that exchange-traded funds

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56969 (December 14, 2007), 72 FR 72424 (December 20, 2004) (SR-Amex-2007-53) (“Amex Order”). See also Securities Exchange Act Release No. 56802 (November 16, 2007), 72 FR 65994 (November 26, 2007) (SR-Amex-2007-53) (“Amex Proposal”).

⁴ Reuters America LLC (“Reuters”) is the owner, publisher, and custodian of CCI-TR, which represents a total return version of the original Commodity Research Bureau (“CRB”) Index. The Index is widely viewed as a broad measure of overall commodity price trends because of the diverse nature of the Index’s constituent commodities. The CCI-TR consists of 17 commodity futures prices. The 17 commodities are currently: corn, wheat, soybeans, live cattle, lean hogs, gold, silver, copper, cocoa, coffee, sugar #11, cotton, orange juice, platinum, crude oil, heating

to offer investors a representation of the investable returns that an investor should expect to receive by attempting to replicate the CCI index by buying the respective commodity futures and collateralizing their investment with U.S. Government securities (*i.e.*, 90-day T-Bills). The CCI-TR takes into account the economics of rolling listed commodity futures forward to avoid delivery and maintain exposure in liquid contracts. To achieve the objectives of the index, Reuters has established rules for calculation of the Index. Specifically, only settlement and last-sale prices are used in the Index's calculation; bids and offers are not recognized—including limit-bid and limit-offer price quotes. Where no last-sale price exists, typically in the more deferred contract months, the previous days' settlement price is used.

According to the Amex Proposal, the Managing Owner represents that it will seek to arrange to have the Index calculated and disseminated on a daily basis through a third party if the Index Sponsor ceases to calculate and disseminate the Index. If, however, the Managing Owner is unable to arrange the calculation and dissemination of the Index, the Amex has represented in the Amex Proposal that it will undertake to delist the Shares. In such event, the Exchange would cease trading the Shares.

The disseminated value of the Index will not reflect changes to the prices of the Index Commodities between the close of trading of the various Commodity Futures Contracts and the close of trading of the Core Trading Session at the Exchange at 4:15 p.m. ET as well as the Exchange's Opening Session and Late Trading Session. In addition, Reuters and Amex on their respective Web sites will provide any adjustments or changes to the Index.

The daily settlement prices for each of the Commodity Futures Contracts held by the Master Fund are publicly available on the NYBOT, New York Mercantile Exchange ("NYMEX"), Chicago Mercantile Exchange ("CME"), and Chicago Board of Trade ("CBOT") Web sites.⁸ In addition, various data vendors and news publications publish futures prices and data. Futures contract quotes and last-sale information for the Commodity Futures Contracts on the Index Commodities is widely disseminated through a variety of

market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real time data for the Commodity Futures Contracts is available by subscription from Reuters and Bloomberg. The various futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for each Commodity Futures Contract are also available from the various futures exchanges on their Web sites as well as other financial informational sources.

The Web site for the Fund and/or Amex, which are publicly accessible at no charge, will contain the following information: (1) The current NAV per Share daily and the prior business day's NAV per Share and the reported closing price; (2) the midpoint of the bid-ask price⁹ in relation to the NAV as of the time the NAV per Share is calculated ("Bid-Asked Price"); (3) calculation of the premium or discount of such price against the NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (5) the Prospectus; and (6) other applicable quantitative information.

According to the Amex Proposal, Amex will disseminate for the Fund on a daily basis by means of CTA/CQ High Speed Lines information with respect to the corresponding Indicative Fund Value (as discussed below), the recent NAV per Share and the number of Shares outstanding. Amex will also make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The closing prices and settlement prices of the Commodity Futures Contracts held by the Master Fund are also readily available from the NYMEX, CBOT, CME, and NYBOT; automated quotation systems; published or other public sources; or on-line information services such as Bloomberg or Reuters. In addition, Amex represented in the Amex Proposal that it will provide a hyperlink on its Web site at www.amex.com to the CCI-TR's Web site at www.crbtrader.com.

The Bank of New York ("Administrator") calculates and disseminates, once each trading day, the NAV per Share to market participants. Amex has represented that it will obtain a representation (prior to listing of the Fund) from the Trust that the NAV per

Share will be calculated daily and made available to all market participants at the same time. In addition, the Administrator causes to be made available on a daily basis the corresponding cash deposit amounts to be deposited in connection with the issuance of the respective Shares. In addition, other investors can request such information directly from the Administrator, and which will be provided upon request.

To provide updated information relating to the Fund for use by investors, professionals, and persons wishing to create or redeem the Shares, Amex will disseminate, through the facilities of CTA, an updated Indicative Fund Value for the Fund, according to the Amex Proposal. The Indicative Fund Value will be disseminated on a per-Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The Indicative Fund Value will be calculated based on the cash required for creations and redemptions (*i.e.*, NAV x 50,000) for the Fund adjusted to reflect the price changes of the Commodity Futures Contracts and the holdings of U.S. Treasury securities and other high-credit-quality short-term fixed income securities.

The Indicative Fund Value will not reflect changes to the price of an underlying commodity between the close of trading of futures contracts at the relevant futures exchanges and the close of trading of the Core Trading Session on the Exchange at 4:15 p.m. ET. The Indicative Fund Value will also not reflect changes to the price of an underlying commodity in the Opening Trading Session and the Late Trading Session. The value of a Share may accordingly be influenced by non-concurrent trading hours between Exchange and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on the Exchange from 4 a.m. to 8 p.m. ET, the trading hours for each of the Index commodities underlying the futures contracts will vary.

While the markets for futures trading for each of the Index commodities is open, the Indicative Fund Value can be expected to closely approximate the value per-Share of the corresponding Basket Amount. However, during Exchange trading hours when the Commodity Futures Contracts have ceased trading, spreads and resulting premiums or discounts may widen and, therefore, increase the difference between the price of the Shares and the NAV of the Shares. The Indicative Fund Value on a per-Share basis disseminated

shall trade from 4 a.m. to 8 p.m. Eastern time ("ET") (including the Opening Trading Session (4 a.m. to 9:30 a.m. ET), the Core Trading Session (9:30 a.m. to 4:15 p.m. ET), and the Late Trading Session (4:15 p.m. to 8 p.m. ET)).

⁸ See www.nybot.com, www.nymex.com, www.cme.com, and www.cbtc.com.

⁹ The bid-ask price is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

during the Exchange's Core Trading Session, Opening Trading Session, and Late Trading Session should not be viewed as a real-time update of the NAV, which is calculated only once a day.

UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of the Fund if: (1) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the Indicative Fund Value or the value of the Index is no longer available at least every 15 seconds; or (2) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. UTP trading in the Shares is also governed by the trading halts provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value (which would encompass the Indicative Fund Value) or the value of the underlying index.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

The trading of the Shares will be subject to Commentary .02(e)(1)–(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. *See* "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying Commodity Futures Contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares could be halted pursuant to

the Exchange's "circuit breaker" rule¹⁰ or by the halt or suspension of trading of the underlying Commodity Futures Contracts.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Commentary .02(e)(4) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying physical asset or commodity, related futures or options on futures, or any other related derivative (including the Shares). In addition, Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying physical asset or commodity, related futures or options on futures, or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26. Commentary .02(e)(2)–(3) to NYSE Arca Equities Rule 8.200 requires that Market Makers handling the Shares provide the Exchange with all the necessary information relating to their trading in the underlying physical assets or commodities, related futures contracts and options thereon, or any other derivative.

The Exchange may obtain information via the Intermarket Surveillance Group

("ISG") from other exchanges who are members or affiliates of the ISG.¹¹ In addition, the Exchange has an Information Sharing Agreement in place with NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),¹² which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Indicative Fund Value is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated indicative fund value will not be calculated or publicly disseminated; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the registration statement for the Fund.

The Bulletin will also reference the fact that there is no regulated source of last-sale information regarding physical commodities, that the Commission has no jurisdiction over the trading of commodity futures contracts, and that the CFTC has regulatory jurisdiction

¹¹ For a list of the current members and affiliate members of ISG, *see* <http://www.isgportal.com>. CBOT, CME, and NYBOT are members of ISG.

¹² NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that it believes would be useful to make a recommendation.

¹⁰ *See* NYSE Arca Equities Rule 7.12.

over the trading of commodity futures contracts.

The Bulletin will also discuss any exemptive, no-action, or interpretive relief granted by the Commission from Section 11(d)(1) of the Act¹³ and certain rules under the Act, including Rule 10b-10, Rule 14e-5, Rule 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Act.

The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and Section 6(b)(5),¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the Exchange believes that the proposed rule change is consistent with Rule 12f-5 under the Act¹⁶ because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEArca-2007-68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2007-68 and should be submitted on or before January 22, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁹ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²⁰ The Commission notes that it previously approved the listing and trading of the Shares on Amex.²¹ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²² which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²³ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA. The Exchange represents that values of the underlying Index are computed by Reuters and

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(f).

²⁰ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²¹ See *supra* note 3.

²² 17 CFR 240.12f-5.

²³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹³ 15 U.S.C. 78k(d)(1).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 240.12f-5.

¹⁷ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

widely disseminated every 15 seconds. Furthermore, the Indicative Fund Value for the Fund will be updated on a per-Share basis and published via the facilities of the CTA/CQ High Speed Lines on a 15-second delayed basis throughout the Exchange's Core Trading Session. The Exchange also represents that Amex will disseminate information with regard to the recent NAV per Share and Shares outstanding on a daily basis by means of the CTA/CQ High Speed Lines.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. If the listing market halts trading when the Indicative Fund Value is not being calculated or disseminated, the Exchange would halt trading in the Shares. The Exchange has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

3. The Information Bulletin also would discuss the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

4. Trading in the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance.

This approval order is based on these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude

the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-NYSEArca-2007-68), as amended, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Nancy M. Morris,
Secretary.

[FR Doc. E7-25368 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57018; File No. SR-Phlx-2007-68]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Customized U.S. Dollar- Settled Foreign Currency Options

December 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 6, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Phlx. On December 18, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Rule 1079, FLEX Index and Equity Options, to permit trading of U.S. dollar-settled

foreign currency options ("FCOs") with certain individually tailored features.⁴

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and <http://www.phlx.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the trading of U.S. dollar-settled FCOs with individually tailored expiration dates and exercise prices.⁵ Currently, a variety of customized physical delivery FCOs are traded on the Exchange pursuant to Rule 1069, Customized Foreign Currency Options.⁶ Users currently have the ability with respect to physical delivery FCOs to customize the strike price and quotation method and to choose underlying and base currency combinations from among various Exchange listed currencies, including the U.S. dollar. Customized physical delivery FCOs were originally introduced to provide investors with the flexibility and variety offered in the over-the-counter market as well as the benefits attributed to an exchange auction market as they hedge their exchange rate risks.

Individually tailored equity and index options may also be traded pursuant to Rule 1079, FLEX Index and Equity Options.⁷ The Exchange now proposes to amend Rule 1079 to permit some individual tailoring of U.S. dollar-

⁴ The term "FLEX" is a trademark of the Chicago Board Options Exchange, Inc.

⁵ The Options Clearing Corporation ("OCC") will be the issuer and guarantor of these new options.

⁶ See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (approving SR-Phlx-94-18). Customized physical delivery FCOs trade without a specialist or limit order book pursuant to Rule 1069.

⁷ See Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (adopting SR-Phlx-96-38).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces the original filing in its entirety.

settled FCOs as well.⁸ Individually tailored U.S. dollar-settled FCOs would be known as "FLEX currency options" and Rule 1079 would be amended to include FLEX currency options in its title. Any references in Exchange rules or proposed rule changes to "FLEX currency options" would apply *only* to U.S. dollar-settled FCOs that are proposed to trade pursuant to Rule 1079. "FLEX currency options" would *not* include customized physical delivery FCOs that trade pursuant to Rule 1069.

Pursuant to this proposed rule change, the Exchange would be able to offer market participants the ability to trade FLEX currency options with non-standardized expiration dates. At present, pursuant to Exchange Rule 1012, Series of Options Open for Trading, FCO users can only trade U.S. dollar-settled FCO contracts with standardized terms, including standardized expiration dates. Thus, U.S. dollar-settled FCO contracts currently may only be traded with expirations at 1, 2, 3, 6, 9 and 12 months. The Exchange is proposing to revise this previously-standard term by allowing FLEX currency option contracts to expire on any month, business day and year within two years, provided that a FLEX currency option would not be permitted to expire on any day that falls on or within two business days prior or subsequent to an expiration day for a non-FLEX U.S. dollar-settled FCO on the same underlying currency or on any day on which the Federal Reserve Bank is not scheduled to publish its Noon Buying Rate.⁹ This flexibility would enable market participants to hedge their exchange rate exposure more accurately by trading a contract that expires on a trading day of their choosing. All FLEX currency options with customized expiration dates would expire at 11:59 p.m. eastern time on their designated expiration date and cease trading at 10:15 a.m. eastern time that day.¹⁰

Pursuant to Rule 1079(a)(3), users will also be able to individually tailor the strike prices of U.S. dollar-settled FCOs. Strike prices need not be consistent with strike price intervals permissible for non-FLEX U.S. dollar-settled FCOs. The strike price may be specified in terms of a specific dollar amount

rounded to the nearest ten thousandth of a dollar (expressed without reference to the first two decimal places) for FLEX currency options other than the Japanese yen currency option. FLEX options on the Japanese yen may be specified in terms of a specific dollar amount rounded to the nearest one millionth of a dollar (expressed without reference to the first four decimal places). FLEX U.S. dollar-settled foreign currency options will be margined at the same levels as the Exchange's non-FLEX U.S. dollar-settled foreign currency options.¹¹

Pursuant to the proposed amendment to Rule 1079(a)(4)(B), FLEX currency options would be quoted in terms of dollars per unit of underlying foreign currency, just like the non-FLEX U.S. dollar settled FCOs. FLEX currency options may be quoted and traded in the same minimum increments that are established for non-FLEX U.S. dollar settled FCOs pursuant to Exchange Rule 1034.¹²

Rule 1079(a)(9) is being amended to provide for settlement for FLEX currency options. The closing settlement value for FLEX options on the Australian dollar, the Euro and the British pound would be the day's announced Noon Buying Rate, as determined by the Federal Reserve Bank of New York on the expiration date. If the Noon Buying Rate is not announced by 5:00 p.m. eastern time, the closing settlement value would be the most recently announced Noon Buying Rate, unless the Exchange determined to apply an alternative closing settlement value as a result of extraordinary circumstances. The closing settlement value for FLEX options on the Canadian dollar, the Swiss franc and the Japanese yen would be an amount equal to one divided by the day's announced Noon Buying Rate, as determined by the Federal Reserve Bank of New York on the expiration date, rounded to the nearest .0001 (except in the case of the Japanese yen where the amount would be rounded to the nearest .000001). If the Noon Buying Rate were not

announced by 5 p.m. eastern time, the closing settlement value would be based upon the most recently announced Noon Buying Rate, unless the Exchange determined to apply an alternative closing settlement value as a result of extraordinary circumstances. This settlement provision closely tracks Rule 1057, U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value, applicable to non-FLEX U.S. dollar-settled FCOs.¹³ FLEX currency options will be subject to the exercise-by-exception procedures of OCC.¹⁴

The Exchange proposes to amend Rule 1079(a)(5), which currently permits market participants to determine whether a FLEX index or equity option will have either an American or European exercise style.¹⁵ As amended, Rule 1079(a)(5) would continue to permit this flexibility for FLEX index and equity options, while limiting FLEX currency options to European exercise style only. The option type may be a put, call or hedge order.¹⁶

Currently Rule 1079(c), which will also apply to FLEX currency options, provides that at least two Exchange members (ROT's and/or a Specialist) must be assigned to each FLEX option. ROT's and Specialists must apply on the appropriate Exchange form to be assigned in FLEX options.¹⁷ An assigned ROT or assigned Specialist may choose to be assigned in a particular FLEX option. Assigned ROT's and the assigned Specialist are subject to certain obligations respecting the trading of FLEX options. For example, the affirmative and negative market making obligations of Rule 1014(c) apply. Assigned ROT's and the assigned Specialist must respond with a market respecting any FLEX option upon request by a Floor Official. However, assigned ROT's and assigned Specialists

¹³ However, Rule 1057 bases the closing settlement value for non-FLEX U.S. dollar-settled FCO on the Noon Buying Rate of the business day *prior* to expiration rather than that of the expiration date itself.

¹⁴ See OCC Rule 805, which sets forth the expiration date exercise procedures for options cleared and settled by the OCC. The exercise-by-exception or "Ex-by-Ex" procedure employed by OCC in OCC Rule 805 allows an OCC Clearing Member to effect a choice not to exercise an option that is in the money by the exercise threshold amount or more, or to exercise an option which has not reached the exercise threshold amount.

¹⁵ An American style option may be exercised at any time up to its expiration, while a European style option can only be exercised on its expiration day. See Phlx Rule 1000(b)(34) and (35).

¹⁶ See Exchange Rules 1079(a)(2), 1000(b)(7) and 1066(f).

¹⁷ See Rule 1079(c)(1) regarding Assigned ROT's and Assigned Specialists. Rule 1079(c)(1) currently applies to all FLEX options and would apply to FLEX currency options as well.

⁸ Corresponding changes are proposed to be made to Options Floor Procedure Advice F-28, Trading FLEX Index and Equity Options. The Exchange is not proposing to amend Rule 1069, Customized Foreign Currency Options. Rule 1069 will continue to apply to physical delivery FCO only.

⁹ See proposed amendment to Rule 1079(a)(6)(A).

¹⁰ *Id.* See also proposed amendment to Rule 1079(a)(9)(C).

¹¹ See Phlx Rule 722.

¹² See Rule 1034, Minimum Increments, section (a), for the minimum increments applicable to non-FLEX U.S. dollar-settled FCO. Commencing January 2, 2008, U.S. dollar-settled FCO will be quoted and traded in minimum increments of \$.0001 (expressed as .01) for option contracts on the British pound, \$.0001 (expressed as .01) for option contracts on the Swiss franc, \$.0001 (expressed as .01) for option contracts on the Canadian dollar, \$.0001 (expressed as .01) for option contracts on the Australian dollar, \$.0001 (expressed as .01) for option contracts on the Euro, \$.000001 (expressed as .01) for option contracts on the Japanese yen. See Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007) (approving SR-Phlx-2007-70).

are not required to provide continuous quotes or markets at a certain minimum bid-ask differential (quote spread parameter).

If there is an assigned Specialist and an assigned ROT in a FLEX option, the FLEX option trades pursuant to the specialist system, just as non-FLEX options do on the Exchange. Only the Specialist in the non-FLEX option may be the assigned specialist in that FLEX option. However, there may not be a Specialist in FLEX options.

Where there is no assigned FLEX Specialist, two assigned ROTs are required.¹⁸ The current responsibilities of a Specialist to determine a market based on the bids and offers voiced as well as to disseminate bids/offers and trades may be handled by the Requesting Member, where there is no assigned Specialist in that FLEX option. If a trade occurs where the Requesting Member is not a participant and there is no assigned Specialist, the responsibility to submit the trade falls upon the seller or largest participant, in accordance with existing trading procedure.¹⁹

Trading of FLEX currency options will be subject to Rule 1079(b), which currently governs the trading of FLEX equity and index options. Generally, like FLEX equity and index options, FLEX currency options would be traded in accordance with many existing option rules. Rule 1079 states that although FLEX options are generally subject to the rules in the options section of the Exchange rules, to the extent that the provisions of Rule 1079 are inconsistent with other applicable Exchange rules, Rule 1079 takes precedence with respect to FLEX options. Provisions of Rule 1079 that are not limited by their terms to FLEX equity or index options would be equally applicable to FLEX currency options.²⁰ Thus, most of Rule 1079(b),

Procedure for Quoting and Trading FLEX Options, will apply to FLEX currency options in the same way it applies to FLEX equity and index options.

The Automated Options Market ("AUTOM") system is not available for FLEX options.²¹ All FLEX options must be quoted and traded in the trading crowd of the corresponding non-FLEX option. Because FLEX options are not continuously quoted, nor are series pre-established, the variable terms of FLEX options are established by the following process. In order to initiate a transaction, a Requesting Member must submit an RFQ to the appropriate trading crowd, announcing the terms of the quote sought. The characteristics, including which terms and to what degree certain option features may be individually tailored, are outlined in Rule 1079(a). On receipt of an RFQ in proper form, the assigned Specialist or the Requesting Member causes the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").²² RFQs, responsive quotes, booked orders and completed trades are promptly reported to OPRA and disseminated as an administrative text message. Although certain information is not required to be part of the RFQ (such as account type, crossing intention, response time and size), this information is reflected on the final order ticket. Further, the size and crossing intention must be voiced as part of voicing the RFQ.

Following the RFQ announcement, a preset response time begins, during which members may provide responsive quotes. As stated in existing Rule 1079(b)(2), the response time, between 2 and 15 minutes, is determined by the Options Committee.²³

Pursuant to proposed Rule 1079(a)(8), as proposed to be amended, if there is no open interest in the particular FLEX

currency option series when an RFQ is submitted, the minimum size of an RFQ for FLEX currency options would be 50 contracts. If there is open interest, the minimum size of the RFQ would be 25 contracts, or the remaining size on a closing transaction, whichever is less. The minimum value size for a responsive quote, other than a responsive quote of an assigned ROT or assigned specialist, would be 50 contracts or the remaining size on a closing transaction, whichever is less. Assigned ROTs and assigned Specialists who respond to an RFQ would be required to respond to each RFQ with at least 250 contracts or the size amount requested in the RFQ, whichever is less.²⁴

During the response time, qualified members could provide responsive quotes to the RFQ, which may be entered, modified or withdrawn during such response time. At the end of the response time, the assigned Specialist, or if none, the Requesting Member would determine the best bid and offer ("BBO"), based on price, disseminating such market with reference to the corresponding RFQ. However, where two or more bids/offers are at parity, under Rule 1079(b)(3) bids/offers submitted by an assigned Specialist, assigned ROT or customer would have priority over the bids/offers submitted by non-assigned ROTs and by controlled accounts as defined in Phlx Rule 1014(g)(i).

Following the determination of the BBO, a BBO Improvement Interval may be invoked if the Requesting Member rejects the BBO or the BBO is for less than the entire size requested. The BBO Improvement Interval is a two minute time period during which the BBO may be matched or improved. As a result of the Improvement Interval, a new BBO is established, which is disseminated with reference to the corresponding RFQ. An assigned ROT and the assigned Specialist who responded with a market during the response time may immediately join the new BBO.

A trade in FLEX options cannot be executed until the end of the response time or BBO Improvement Interval. Once the response time or BBO Improvement Interval ends, the Requesting Member is given the first opportunity to trade on the market by voicing a bid/offer in the trading crowd. The Requesting Member has no obligation to accept any bid or offer for a FLEX option. If the Requesting Member rejects the BBO or the BBO size

¹⁸ The non-FLEX Specialist may be an assigned ROT in the FLEX option, or not assigned at all.

¹⁹ See Floor Procedure Advice F-2, Time Stamping, Matching and Access to Matched Trades.

²⁰ For example, the following provisions of Rule 1079 are not restricted to FLEX equity or index options or to FLEX U.S. dollar-settled FCOs, and are therefore applicable to each of them: The introductory language of Rule 1079; Rule 1079(a)(2) which specifies permissible order types; Rule 1079(a)(6)(C) which provides that a FLEX option cannot expire on the same day that series is established at OCC; Rule 1079(a)(7) which provides that requests for quotes ("RFQs") are to be submitted pursuant to Rule 1079(b); Rule 1079(a)(10), which generally defines the term "Requesting Member" as a member of the Exchange qualified to trade FLEX options who initiates an RFQ; Rule 1079(b), which establishes the procedure for quoting and trading FLEX options (other than Rule 1079(b)(1)(3) which is being revised to apply only to equity and index FLEX options); and Rule 1079(c), which establishes who

may trade FLEX options. Rule 1079(b)(5)(B) is being amended to make that provision applicable to FLEX U.S. dollar-settled FCO just as it applies to FLEX index and FLEX equity options.

²¹ The term "AUTOM" is used interchangeably with the term "Phlx XL," the Exchange's fully electronic trading platform for options. The Exchange intends to file a separate proposed rule change to update its rules to reflect that orders are now delivered electronically over Phlx XL.

²² Operationally, the Requesting Member provides this information to data entry personnel, who enter it into Exchange systems.

²³ The Options Committee has established a response time of ten minutes for FLEX equity and index options. The response time for FLEX currency options would be the same as for FLEX equity and index options. Although the Options Committee is authorized to change the response time within the permissible range, any such change would be preceded by notice to the Exchange membership.

²⁴ These minimum sizes are different from the minimum sizes applicable to equity options and index options under existing Rule 1079(a)(8).

exceeds the entire size requested, another member may accept such BBO or the unfilled balance of the BBO. Acceptance of a bid/offer creates a binding contract under Exchange rules.

Once the BBO is established, the RFQ remains open that trading day, unless a trade occurs, and a member may re-quote the market with respect to the open RFQ without submitting an additional RFQ.²⁵ If a trade occurs, a new RFQ is required. Only an assigned ROT or assigned Specialist who responded to the open RFQ during the response time or BBO Improvement Interval may immediately join the re-quoted market, thus matching for parity purposes. Neither the Requesting Member, nor the re-quoting member, is given the first opportunity to trade on the re-quoted market.

Further, as with FLEX index options and FLEX equity options, there will be a limit order book for FLEX currency options. As with FLEX index and equity options, the Specialist in the listed non-FLEX U.S. dollar-settled FCO, whether or not assigned in FLEX options, must accept FLEX orders on the FLEX book after completion of the RFQ process. As such, the Specialist would be required to monitor FLEX markets for any booked orders. The Exchange would require all Specialists in U.S. dollar-settled FCOs, whether acting as an assigned FLEX currency option Specialist or not, to maintain the FLEX book for consistency with the procedures for non-FLEX options and to prevent investor confusion. Only customer day limit orders may be placed on the FLEX currency option book. Booked orders expire at the end of each trading day. The limit price and size must be written on the RFQ ticket and disseminated as an administrative text message through OPRA.

In order to trade with the book, an executing member must quote the market and announce the trade. The Exchange believes that the FLEX order book should serve as a useful tool for customers, as does the current limit order book respecting non-FLEX U.S. dollar-settled currency options. With respect to booked orders for the same FLEX currency option (that is, orders for

a FLEX currency option with identical terms), Rule 1014 will apply to determine priority and parity among such orders.²⁶ When trading with a booked order, a member must re-quote the market and announce the trade.

Generally, on the Phlx options floor, a cross may take place in accordance with Rule 1064. Crossing in FLEX currency options will be governed Rule 1079(b)(6), which currently applies to crosses in the existing FLEX equity and index options. The Requesting Member must voice the crossing intention as part of voicing the RFQ. After the BBO has been determined, the Requesting Member intending to cross must bid (or offer) at or better than the BBO. If the Requesting Member's bid/offer is at the BBO, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. For instance, if there are two members on parity at the BBO, the Requesting Member and an assigned ROT, the Requesting Member is entitled to receive 50% of the contra-side contracts, which is a fair split, not just the 25% guaranteed minimum right of participation. The remainder of the contra-side is split in accordance with the parity/priority provision applicable to determining the BBO, such that assigned ROTs/Specialists may be afforded priority.

If the Requesting Member's bid/offer improves the existing BBO, an assigned ROT or assigned Specialist who responded with a market during the response time or BBO Improvement Interval, may immediately join the Requesting Member's improved bid or offer, thus matching for parity purposes. However, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. The remainder of the contra-side is split in accordance with the parity/priority provision applicable to determining the BBO, such that assigned ROTs/Specialists may be afforded priority. However, broker-dealer crosses and solicited orders, as defined in Rule 1064, are not eligible for the split afforded by these crossing provisions. Broker-dealer crosses and solicited orders must be announced and bid/offer, under the FLEX crossing provision. No 25% minimum guaranteed right of participation applies to solicited orders or broker-dealer/broker-dealer crosses. In addition,

crossing transactions may not be subject to a minimum right of participation, because a customer-to-customer cross would not be required to yield the remainder (75%) to assigned ROTs/Specialists.

Assigned ROTs and the assigned Specialist who respond with a market during the response time may join a new bid/offer voiced during the Improvement Interval and prior to a cross, provided they do so immediately and subject to preserving the priority of customer orders. Enabling assigned ROTs and the assigned Specialist to join any such new bid/offer affords them parity at that new BBO.

Proposed Rule 1079(d)(3) is unique to FLEX currency options and provides that positions in FLEX U.S. dollar-settled FCOs would be aggregated with positions in non-FLEX U.S. dollar-settled FCO contracts as well as physical delivery FCO contracts for purposes of determining compliance with the position limits established by Rule 1001. Like non-FLEX U.S. dollar-settled FCOs, (i) one British pound FLEX option contract would count as one third of a contract, (ii) one Euro FLEX option contract would count as one sixth of a contract, (iii) one Australian dollar FLEX option contract would count as one fifth of a contract, (iv) one Canadian dollar FLEX option contract would count as one fifth of a contract, (v) one Swiss Franc FLEX option contract would count as one sixth of a contract, and (vi) one U.S. dollar-settled Japanese yen FLEX option contract would count as one sixth of a contract.²⁷

Pursuant to existing Rule 1079(c)(3), no ROT or Specialist may effect any FLEX option transaction unless a Letter of Guarantee has been issued by a clearing member organization and filed with the Exchange pursuant to Rule 703 specifically accepting financial responsibility for all FLEX option transactions made by such person and such letter has not been revoked. As a rule applicable to all FLEX options, Rule 1079(c)(3) would apply to the new FLEX currency options as well. The Exchange may waive the financial requirements of this Rule in unusual circumstances. Assigned Specialists/ROTs in FLEX currency options, as well as non-assigned ROTs/Specialists in FLEX currency options, also would be required to comply with Exchange

²⁵ A re-quote does not require the submission of a new RFQ, thereby avoiding the delay of a new response time where such time may not be needed due to a recent quote. An option quoted earlier in the trading day should be easier to price, such that a new response time is not needed. Any time a market is re-quoted that day, the new BBO and any resulting trade are disseminated with reference to the original RFQ. However, once a trade occurs, a new RFQ is required. The Options Committee may determine to establish an abbreviated response time for a new RFQ, because the full ten minutes may not be required for pricing determinations.

²⁶ Although the principles of price/time priority and simultaneous bids/offers at parity of Rule 1014 would apply, the enhanced specialist participation of sub-paragraphs (g)(ii) and (iii) are not applicable to FLEX options.

²⁷ The counting of both FLEX and non-FLEX U.S. dollar-settled FCO contracts as less than one full contract reflects the fact that the size of the U.S. dollar-settled FCO contract is smaller than the Exchange's physical delivery contract on the same currencies. The position limit rules were originally adopted for the larger physical delivery contracts.

financial requirements set forth in Rule 703, Financial Responsibility and Reporting.

Like other FLEX options, there would be no trading rotations in FLEX currency options, either at the opening or at the close of trading. The Exchange has determined that, initially, FLEX currency options would have the same trading hours as non-FLEX U.S. dollar-settled FCO. The Exchange would be able to establish other trading times for FLEX currency options within the regular trading hours for the non-FLEX U.S. dollar-settled FCOs, including reflecting any new trading hours for non-FLEX U.S. dollar-settled FCOs.²⁸

The Exchange also proposes to amend Floor Procedure Advice F-28, Trading FLEX Index and Equity Options, to include FLEX Currency Options in its title and to make parallel changes to those being proposed to Rule 1079(b).

Exchange rules and regulations involving sales practice will be applicable to FLEX currency options. Finally, the Exchange represents that it has adequate surveillance procedures for, and systems capacity to support, the trading of FLEX currency options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁹ in general, and with Section 6(b)(5) of the Act,³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing investors the ability to tailor foreign currency option contracts to suit their particular investment requirements and increased flexibility in satisfying particular investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²⁸ Under this proposal, expanding and narrowing FLEX currency trading hours within the regular trading hours of the particular product would not require a proposed rule change pursuant to Section 19(b) of the Act. The Exchange, however, would notify its members, in advance, prior to making any such change. Any proposal to expand trading hours outside of established regular trading hours would be submitted as a proposed rule change to the Commission pursuant to Section 19(b) of the Act.

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-68 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-25355 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57038; File No. SR-Phlx-2007-93]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to \$5 Strike Price Intervals of Options on Exchange-Traded Fund Shares above \$200

December 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Phlx. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Commentary .05 to Exchange Rule 1012 ("Series of Options Open for Trading") to clarify that strike price intervals of options on Exchange-Traded Fund Shares ("ETFs") will be \$5 or greater where the strike price is over \$200.⁵

The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and <http://www.phlx.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify that strike price intervals of options on ETFs will be \$5 or greater where the strike price is over \$200. Commentary .05 to Phlx Rule 1012 currently states that strike price intervals of options on ETFs will be \$1 or greater when the strike price of the underlying asset is \$200 or less. As such, most ETF options, which have become popular investment tools, are priced at \$1 strike price intervals.⁶ However, some ETF options are listed at \$10 strike price intervals at strike prices greater than \$200.⁷ According to the

Exchange, within the last few months, the Phlx has received requests from Phlx traders to price ETF options at \$5 strike price intervals above \$200. Because the Exchange does not currently have a provision that allows ETF options to list and trade at \$5 or greater strike price intervals where the strike price is more than \$200, however, the Exchange has only been able to list these ETF options at \$10 or greater strike price intervals.⁸ This has put Phlx at a competitive disadvantage, particularly with respect to options exchanges that allow \$5 strike price intervals for ETF options.⁹

The Exchange believes that the rule proposal to clarify the availability of \$5 strike price intervals for ETF options above \$200 should enable Phlx to competitively list and trade ETF options at appropriate strike price intervals to the benefit of public customers, traders on the Exchange, and the Exchange itself.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act¹⁰ in general, and furthers the objectives of section 6(b)(5) of the Act¹¹ in particular, in that it is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. Specifically, the Exchange believes that the proposal would achieve this by allowing listing and trading of options on ETFs at \$5 strike price intervals within certain parameters, commensurate with the rules of other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder,¹³ because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b-4(f)(6)(iii) under the Act,¹⁴ Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the date of the filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

⁵ Strike price intervals for series of options on ETFs were initially established at \$1 or greater where the strike price is \$200 or less. See Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (SR-Phlx-2001-32) (filing silent regarding strike price intervals where the strike price is over \$200).

⁶ The proposal establishing strike price intervals for series of options on ETFs at \$1 or greater where the strike price is \$200 or less did not discuss strike price intervals where the strike price is over \$200. See Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (SR-Phlx-2001-32).

⁷ For example, ETF options trading under the symbols ILF, FXI, MDY, and EEM are all listed at strike prices greater than \$200.

⁸ Commentary .05(a) to Phlx Rule 1012 states, among other things, that strike prices of options may be \$2.50 or greater where the strike price is \$25 or less, \$5 or greater where the strike price is more than \$25 but less than \$200, and \$10 or greater where the strike price is \$200 or more.

⁹ See, e.g., Amex Rule 903 stating that options on ETFs may trade at \$5 strike price intervals where the strike price is over \$200. See Securities Exchange Act Release Nos. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (SR-AMEX-1996-44) and 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003) (SR-AMEX-2003-36). Supplementary Material .01 to Chapter IV, Sec. 6 of BOX rules similarly allows listing and trading of ETF options at \$5 strike price intervals where the strike price is over \$200.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-93 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Nancy M. Morris,
Secretary.

[FR Doc. E7-25366 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57023; File No. SR-Phlx-2007-83]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Amending By-Law Article X, Section 10-11

December 20, 2007.

On October 29, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission

("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to expand the type of business that certain members of the Exchange's Business Conduct Committee ("Committee") must conduct in order to qualify as a Committee member. The proposed rule change was published for comment in the **Federal Register** on November 19, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Committee has exclusive jurisdiction to, among other things: (1) Monitor compliance with the Act, the rules and regulations under the Act, and the Exchange's By-Laws and Rules; and (2) authorize the initiation of Exchange disciplinary actions or proceedings. Phlx By-Law X, Section 10-11(h) currently requires that, of the nine members that comprise the Committee, one Committee member must principally carry out its business on XLE⁴ and one Committee member must principally carry out its business on the equity options floor.

The proposed rule change would revise the qualification requirements for these two Committee positions. Specifically, Phlx proposes to amend Section 10-11(h) of its By-Laws to provide that these two positions can be filled, respectively, by a Member or person associated with a Member Organization who conducts equity business on XLE and a Member who conducts options business at the Exchange.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) under the Act,⁷ which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs. The proposed rule change would allow a greater pool of Members to be eligible to hold these two Committee positions and would not alter Member participation on the Committee.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2007-83) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

[FR Doc. E7-25367 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57034; File No. SR-Phlx-2007-91]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Require a Non-Streaming Quote Trader Registered Option Traders ("non-SQT ROT") To Submit a List of Options for Intended Assignment

December 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on December 12, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1014(b)(ii)(C) to require Exchange "non-SQT ROTs" (as defined below) to submit to the Exchange a list

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56775 (November 9, 2007), 72 FR 65119.

⁴ XLE is the electronic system that is operated by the Exchange for the entry, display, execution, and reporting of orders in NMS stocks. See Section 1-1(ii) of Phlx's By-Laws.

⁵ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(3).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).

of the options in which such non-SQT ROT intends to be assigned to make markets.

The text of the proposed rule change is available at the Phlx's principal office, the Commission's Public Reference Room, and <http://www.Phlx.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the Exchange to better track the activities of non-SQT ROTs on the Exchange.

Currently there are a number of categories of Exchange Registered Options Traders that make markets in various options on the Exchange. These categories include Exchange Streaming Quote Traders ("SQTs")³ and Remote Streaming Quote Traders ("RSQTs")⁴ that submit continuous electronic option quotations to the Exchange's electronic trading platform for options, Phlx XL.⁵

Currently, there are a number of ROTs on the Exchange's options floor that do not stream electronic quotations into the Phlx XL system, known as "non-SQT ROTs." Instead, non-SQT ROTs make verbal markets when called upon to do

so, and also have the ability to send limit orders to the limit order book via electronic interface with Phlx XL.

There are several rules that include certain requirements for non-SQT ROTs, such as minimum quarterly in-person trading requirements⁶ and the obligation of a non-SQT ROT who transacts more than 20% of his/her contract volume electronically (*i.e.*, by way of placing limit orders on the limit order book that are executed electronically and allocated automatically in accordance with Exchange Rule 1014(g)(vii)) versus in open outcry during any calendar quarter, to submit electronic quotations in a designated percentage of series in such option during the following calendar quarter, depending on the Exchange's total contract volume traded electronically during the affected calendar quarter.⁷

In order to enable the Exchange to better track the above-mentioned non-SQT ROT activity, non-SQT ROTs would be required to notify the Exchange of each option, on an issue-by-issue basis, in which such non-SQT ROT intends to be assigned to make markets. Such notification would be in writing on a form prescribed by the Exchange (an "ROT Assignment Form"). Any change to such ROT Assignment Form must be made in writing by such non-SQT ROT prior to the end of the trading session in which such change is to take place. The purpose of the "end of the trading session" requirement is to permit non-SQT ROTs to provide additional liquidity to issues not listed on the ROT Assignment Form (especially during periods of peak market activity) without the burden and delay of seeking out a new ROT Assignment Form and appropriate Exchange staff, which could cause the non-SQT ROT to miss out on a trading opportunity.

Receipt of the properly completed ROT Assignment Form from a duly qualified non-SQT ROT applicant would constitute acceptance by the Exchange of such non-SQT ROT's assignment in, or termination of assignment in (as indicated on the ROT Assignment Form), the options listed on such ROT Assignment Form. All such assignments would not be effective, and would be terminated, in the event that such non-SQT ROT applicant fails to qualify as an ROT on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)

of the Act⁸ in general, and furthers the objectives of section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the foregoing proposal should enable it to better monitor the activities of non-SQT ROTs, which should enhance the fair and orderly market of the Exchange, which would benefit investors in general.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2007-91 on the subject line.

³ An SQT is a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁴ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁵ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR-Phlx-2003-59).

⁶ See Exchange Rule 1014, Commentary .01.

⁷ See Exchange Rule 1014(b)(ii)(E)(2).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 No. SR-Phlx-2007-91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2007-91 and should be submitted on or before January 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Nancy M. Morris,
Secretary.

[FR Doc. E7-25375 Filed 12-28-07; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11140 and #11141]

Hawaii Disaster #HI-00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Hawaii dated 12/19/2007.

¹⁰ 17 CFR 200.30-3(a)(12).

Incident: Severe Storms, High Winds, Rains and Flooding.

Incident Period: 12/04/2007 through 12/07/2007.

EFFECTIVE DATE: 12/19/2007.

Physical Loan Application Deadline Date: 02/18/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 09/19/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Honolulu, Maui.

Contiguous Counties:

None.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11140 B and for economic injury is 11141 O.

The State which received an EIDL Declaration # is Hawaii.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 19, 2007.

Steven C. Preston,
Administrator.

[FR Doc. E7-25379 Filed 12-28-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11124 and #11125]

Washington Disaster Number WA-00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Washington (FEMA-1734-DR), dated 12/09/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing through 12/17/2007.

EFFECTIVE DATE: 12/17/2007.

Physical Loan Application Deadline Date: 02/07/2008.

EIDL Loan Application Deadline Date: 09/09/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Washington, dated 12/09/2007 is hereby amended to establish the incident period for this disaster as beginning 12/01/2007 and continuing through 12/17/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-25372 Filed 12-28-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11124 and #11125]

Washington Disaster Number WA-00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Washington (FEMA-1734-DR), dated 12/09/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing through 12/17/2007.

EFFECTIVE DATE: 12/19/2007.

Physical Loan Application Deadline Date: 02/07/2008.

EIDL Loan Application Deadline Date: 09/09/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Washington, dated 12/09/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Clallam, Kitsap.

Contiguous Counties:

Washington, King.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-25377 Filed 12-28-07; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2007-0100]

Rate for Assessment on Direct Payment Fees to Representatives in 2008

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: SSA is announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (the Act), 42 U.S.C. 406(d), and 1383(d)(2)(C) is 6.3 percent for 2008.

FOR FURTHER INFORMATION CONTACT:

Gwen Jones Kelley, Acting Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401. Phone: (410) 965-0495, e-mail Gwen.Jones.Kelley@ssa.gov.

SUPPLEMENTARY INFORMATION: Section 406 of Public Law No. 106-170, the Ticket to Work and Work Incentives

Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). That legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under sections 206(a)(4) or 206(b)(1) of the Act before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. Beginning in 2005, sections 302 and 303 of Public Law No. 108-203, the Social Security Protection Act of 2004 (SSPA), extended the direct payment of fees to attorneys in cases under Title XVI of the Act and to eligible non-attorney representatives in cases under Title II or Title XVI of the Act. Fees directly paid under these provisions are subject to the same assessment. In addition, sections 301 and 302 of the SSPA imposed a dollar cap (i.e., currently \$79.00) on the amount of the assessment so that the assessment may not exceed the lesser of that dollar cap or the amount determined using the assessment percentage rate.

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2008. We will continue to review our costs for these services on a yearly basis.

Dated: December 20, 2007.

Mary Glenn-Croft,

Deputy Commissioner for Budget, Finance and Management.

[FR Doc. E7-25409 Filed 12-28-07; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 6047]

Culturally Significant Objects Imported for Exhibition Determinations: "Arms and Armor from Imperial Austria"

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 "Arms and Armor from Imperial Austria", 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 Cleveland Museum of Art, Cleveland, Ohio, from on or about February 24, 2008, until on or about June 1, 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 Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8058). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 19, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7-25421 Filed 12-28-07; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6046]

Culturally Significant Objects Imported for Exhibition Determinations: "The Lure of the East: British Orientalist Painting, 1830-1925"

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 "The Lure of the East: British Orientalist Painting, 1830-1925", 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 Yale Center for British Art, New Haven, Connecticut, from on or about February 7, 2008, until on or about April 27, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact 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: December 21, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7-25419 Filed 12-28-07; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6017]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces a meeting of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for the February 2008 meeting of the working groups of the International Telecommunication Union Council.

The ITAC will meet to prepare advice for the U.S. on positions for the February 2008 meeting of the working groups of the International Telecommunication Union Council on Wednesday January 16, 2:30–4:30 p.m. EST at a location in the Washington, DC, metro area. Meeting details and detailed agendas will be posted on the mailing list itac@eblist.state.gov. People desiring to participate on this list may apply to the secretariat at minardje@state.gov.

The meeting is open to the public.

Dated: December 21, 2007.

Doreen F. McGirr,

International Communications & Information Policy, Department of State.

[FR Doc. E7-25418 Filed 12-28-07; 8:45 am]

BILLING CODE 4710-45-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 2007, there were four applications approved. This notice also includes information on two applications, approved in October 2007, inadvertently left off the October 2007 notice. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Charlotte, North Carolina.

Application Number: 07-02-C-00-CLT.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in This Decision: \$144,557,137.

Earliest Charge Effective Date: February 1, 2018.

Estimated Charge Expiration Date: December 1, 2020.

Class of Air Carriers Not Required To Collect PFCs:

Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Charlotte/Douglas International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct taxiway V.

New aircraft rescue and firefighting vehicle.

Aircraft deicing facility.

Terminal complex signage.

Baggage handling room concourse E.

Concourse restroom reconstruction.

Master plan land acquisition.

Application development cost.

Brief Description of Projects Partially Approved for Collection and Use:

West Boulevard relocation—west.

Determination: The FAA has determined that only the portion of this project connecting the relocated Wallace Neel Road to the existing road system is eligible at this time. The remaining portions of the project have not been adequately justified since they do not appear necessary for the construction of the third parallel runway.

Concourse E improvements.

Determination: The FAA determined that the costs associated with the tenant finishes are not PFC eligible.

Decision Date: October 25, 2007.

FOR FURTHER INFORMATION CONTACT: John Marshall, Atlanta Airports District Office, (404) 305-7153.

Public Agency: Telluride Regional Airport Authority, Telluride, Colorado.

Application Number: 08-06-C-00-TEX.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$6,000,000.

Earliest Charge Expiration Date: January 1, 2008.

Estimated Charge Expiration Date: January 1, 2019.

Class of Air Carriers Not Required To Collect PFC's:

Part 135 charter operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Telluride Regional Airport.

Brief Description of Project Approved for Collection and Use:

Runway safety area reconstruction.

Decision Date: October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342-1258.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved In This Decision: \$707,705.

Earliest Charge Effective Date: September 1, 2010.

Estimated Charge Expiration Date: September 1, 2012.

Class of Air Carriers Not Required To Collect PFC'S:

None.

Brief Description of projects approved for Collection and Use:

Terminal expansion—expand gate holding area.

Replace rotating beacon.

Decision Date: November 2, 2007.

FOR FURTHER INFORMATION CONTACT:

Trang Tran, Seattle Airports District Office, (425) 227-1662.

Public Agency: Allegheny County Airport Authority, Pittsburgh, Pennsylvania.

Application Number: 07-06-C-00-PIT.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved In This Decision: \$40,370,883.

Earliest Charge Effective Date: June 1, 2023.

Estimated Charge Expiration Date: December 1, 2024.

Class of Air Carriers Not Required To Collect PFC's:

Non-scheduled, on demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pittsburgh International Airport.

Brief Description of Project Partially Approved for Collection and Use:

Deicing—contaminated storm water treatment facility—phase II final design/construction.

Determination: The FAA determined that a portion of the requested PFC amount had previously been financed by other funding sources.

Decision Date: November 16, 2007.

FOR FURTHER INFORMATION CONTACT: Lori Ledeborn, Harrisburg Airports District Office, (717) 730-2835.

Public Agency: City of Quincy, Illinois.

Application Number: 08-03-C-00-UIN.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved In This Decision: \$635,573.

Earliest Charge Effective Date: January 1, 2008.

Estimated Charge Expiration Date: March 1, 2019.

Class of Air Carriers Not Required To Collect PFC's:

Non-scheduled air service.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Quincy Regional Airport.

Brief Description of Projects

Approved for Collection and use:

Install terminal area security fence.

Rehabilitate taxiway B and portions or taxiways A and D.

Install perimeter fence.

Extend runway 18/36 and runway safety area improvements.

Expansion of aircraft rescue and firefighting apron.

Realign taxiway A and construct 400 feet of taxiway F.

Update airport layout plan.

Reconstruct T-hanger access taxiways and drainage improvements.

Remove and realign taxiway D

northwest of runway 18/36. Expand

general aviation cargo ramp.

Master plan and terminal study.

Acquire snow removal equipment.

Install waterline.

Rehabilitate airport entrance road.

Acquire wheel loader with ramp blade.

Taxiway F construction.

Decision Date: November 28, 2007.

FOR FURTHER INFORMATION CONTACT:

Benjamin Mello, Chicago Airports

District Office, (847) 294-7195.

Public Agency: Port of Friday Harbor, Friday Harbor, Washington.

Application Number: 08-02-C-00-FHR.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in This Decision: \$290,272.

Earliest Charge Effective Date: January 1, 2008.

Estimated Charge Expiration Date: July 1, 2016.

Class of Air Carriers Not Required To Collect PFC's:

Passengers enplaned on a flight to an airport in a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Friday Harbor Airport.

Brief Description of Projects Approved for Collection and Use:

Overlay runway 16/34.

Upgrade perimeter fence.

Update master plan.

Acquire land for airport development.

Acquire land for approach protection.

PFC administration.

Decision Date: November 30, 2007.

FOR FURTHER INFORMATION CONTACT:

Trang Tran, Seattle Airports District Office, (425) 227-1662.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original esti- mated charge exp. date	Amended esti- mated charge exp. date
98-03-C-03-BPT, Beaumont, TX	11/01/07	\$1,966,490	\$1,541,860	4/01/05	4/01/05
01-03-C-02-FOD, Fort Dodge, IA	11/06/07	290,193	315,570	04/01/08	04/01/11
05-04-C-01-GLH, Greenville, MS	11/07/07	125,240	135,614	06/01/08	08/01/08
*98-07-C-01-MHT, Manchester, NH	11/15/07	84,643,000	115,844,450	10/01/16	08/01/15
00-01-C-02-FHR, Friday Harbor, WA	11/15/07	223,812	226,805	11/01/05	01/01/08
02-08-C-02-JAC, Jackson, WY	11/16/07	1,186,158	1,189,579	04/01/04	01/01/04
06-12-C-01-MRY, Monterey, CA	11/23/07	1,811,815	2,153,658	03/01/09	08/01/08
93-01-C-03-DSM, Des Moines, IA	11/26/07	8,775,029	8,259,287	05/01/98	05/01/98
99-04-C-02-DSM, Des Moines, IA	11/26/07	1,850,000	1,726,806	11/01/04	11/01/04
00-05-C-02-DSM, Des Moines, IA	11/26/07	1,150,000	971,946	03/01/05	03/01/05

Notes: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from \$3.00 per enplaned passenger to \$4.50 per enplaned passenger. For Manchester, NH this change is effective on January 1, 2008.

Issued in Washington, DC on December 20, 2007.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 07-6241 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Highway in Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Action by Army Corps of Engineers (USACE).

SUMMARY: This notice announces action taken by the USACE that is final within the meaning of 23 U.S.C. 139(l)(1). The action relates to a proposed highway project, Sandpoint North and South, Federal-aid Project No. DHP-NH-IR-CM-F-5116(068), Idaho Department of Transportation (ITD) Key No. 1729, Sandpoint in Bonner County in the State of Idaho. The action grants a Clean Water Act (CWA), section 404 permit for the project, pursuant to 33 U.S.C. 1344.

DATES: By this notice, the FHWA is advising the public of a final agency action subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency action on the highway project will be barred unless the claim is filed on or before June 30, 2008.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane Suite 126, Boise, Idaho 83703; telephone: (208) 334-1843; e-mail: Idaho.FHWA@fhwa.dot.gov. The FHWA Idaho Division Office's normal business hours are 8 a.m. to 4 p.m. (Mountain Time). For USACE: Mr. Brad Daly, Chief, Regulatory Division, U.S. Army Corps of Engineers, Walla Walla District, 201 North 3rd Avenue, Walla Walla, WA 99362; telephone: (509) 527-7151. Normal business hours are 8 a.m. to 5 p.m. (Pacific Time). For ITD: Mr. Damon Allen, District 1 Engineer, Idaho Transportation Department, District 1 Office, 600 West Prairie, Coeur D'Alene, ID 83815; telephone: (208) 772-1200. Normal business hours are 7 a.m. to 4 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: The US-95 Sandpoint North and South project, DHP-NH-IR-CM-F-5116(068), involves construction, reconstruction and widening of an eight-mile section of US-95 from north of the community of

Sagle to north of Kootenai Cutoff Road in the City of Ponderay. A Final Environmental Impact Statement was approved by FHWA on September 9, 1999. A Record of Decision was issued on May 23, 2000. The project will be funded and constructed in phases: Sagle to the Long Bridge, Long Bridge Widening, Sand Creek Byway, and Sandpoint to Kootenai Cutoff Road. An Environmental Assessment (EA), which addressed changes in the Sand Creek Byway phase of the project since the ROD and also reevaluated the entire Sandpoint North and South project, was approved May 7, 2004. The EA was made available to the public and a revised EA and Finding of No Significant Impact (FONSI) were approved on April 15, 2005. A subsequent environmental re-evaluation of the project was approved on August 17, 2006.

Notice is hereby given that, subsequent to the earlier FHWA actions, the USACE has taken a final agency action subject to 23 U.S.C. 139(l)(1) by issuing a CWA section 404 permit for the Sand Creek Byway portion of the highway project. The actions by the USACE, related final actions by other federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its project records, referenced as USACE Permit Number: NWW No. 040500002. That information is available by contacting the USACE at the address provided above. Information about the project and project records is available from the FHWA and the Idaho Transportation Department (ITD) at the addresses provided above. Information on the project and a link to the Notice of Limitation on Claims for Judicial Review of Action by Army Corps of Engineers can also be found at <http://www.itd.idaho.gov/projects/d1/sandcreekbyway>. The FHWA EIS/ROD, EA, Reviewed EA/FONSI, re-evaluation, and other supporting information are also available by contacting the FHWA or ITD at the addresses provided above.

This notice applies to the USACE permit action taken after the FHWA actions described above, and the law under which such action was taken, specifically: section 404 of the Clean Water Act: 33 U.S.C. 1344.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 19, 2007.

Peter Hartman,

Division Administrator.

[FR Doc. 07-6225 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-RY-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-0032]

Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Medical Review Board (MRB) Public Meeting.

SUMMARY: FMCSA announces a public meeting of the Agency's MRB. The MRB public meeting will provide the public an opportunity to observe and participate in MRB deliberations about the revision and development of Federal Motor Carrier Safety Regulation (FMCSR) medical standards, in accordance with the Federal Advisory Committee Act (FACA).

DATES: The MRB meeting will be held from 9 a.m.-1 p.m. on January 28, 2008. Please note the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

ADDRESSES: The meeting will take place at the Hilton Salt Lake City Center, 255 South West Temple, 2nd Floor, Topaz Room, Salt Lake City, UT 84101. You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2007-0032 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78; Apr. 11, 2000). This information is also available at <http://Docketinfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Information on Services for Individuals with Disabilities:

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jennifer Musick at 703-998-0189 ext. 237.

SUPPLEMENTARY INFORMATION:

The preliminary agenda for the meeting includes:
 0900-0920 Call to Order, Introduction and Agenda Review
 0920-0930 Medical Review Board Administrative Discussion
 0930-1000 Driving Evidence Reports (Seizure Disorders and Sleep Apnea)
 1000-1100 Sleep Apnea and Driving Panel Recommendations
 1100-1200 Seizure Disorders Panel Recommendations (cont)
 1200-1230 MRB Deliberations on Sleep Apnea and Seizure Disorders
 1230-1300 Public Comment Period
 1300 Call to Adjourn

* Breaks will be announced on meeting day and may be adjusted according to schedule changes, other meeting requirements.

Background

The U.S. Secretary of Transportation announced on March 7, 2006, the five medical experts who serve on FMCSA's Medical Review Board (MRB). Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59) requires the Secretary of Transportation with the advice of the MRB to "establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them operate the vehicles safely." FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with the Federal Advisory Committee Act (FACA) as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as proposing new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

Meeting Participation

Attendance is open to the interested public, including medical examiners, motor carriers, drivers, and representatives of medical and scientific associations. Written comments for this MRB meeting will also be accepted beginning on December 31, 2007 and continuing until February 12, 2008, and should include the docket ID that is listed in the **ADDRESSES** section.

During the MRB meeting (1230-1300), oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: <http://www.fmcsa.dot.gov/mrb>.

Issued on: December 21, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7-25337 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-0093]

Electronic Signatures on Documents: East West Resort Transportation, LLC, and TMS, LLC, dba Colorado Mountain Express (CME), Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The FMCSA announces that it has received from East West Resort Transportation, LLC, and TMS, LLC, dba Colorado Mountain Express (CME), an application for an exemption from the original signature requirement for a driver on the application for employment required by the Federal Motor Carrier Safety Regulations. The exemption would allow CME to use an electronic signature as a functional equivalent of an original signature on the driver employment applications. CME states that the use of electronic signatures would substantially improve the level of service that it can provide the public, as it would expedite processing of employment applications as well as improve cost efficiency in its business. FMCSA requests public comment on CME's application for exemption.

DATES: Comments must be received on or before January 30, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2004-19608 by any of the following methods:

- **Web Site:** www.regulations.gov. Follow the instructions for submitting comments on the Federal electronic docket site.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- **Hand Delivery:** Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the

Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov at any time or to the ground floor, room W12-140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

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

Public participation: The www.regulations.gov Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the www.regulations.gov Web site and also at the DOT's <http://docketsinfo.dot.gov> Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, make a final decision on the application for exemption at any time after the close of the comment period.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2007-0093 using any of the following methods:

- **Web site:** <http://dmses.dot.gov/submit/>. Follow the instructions for submitting comments on the DOT electronic docket site.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590.
- **Hand Delivery:** Room W12-140 on the ground floor of the West Building, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal Holidays.

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or Room W12-140 on the ground floor of the West Building, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management System (DMS) is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations. Telephone: 202-366-4325. E-mail: MCPSD@fmcsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the conducting of any safety analyses. The Agency must also provide

an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

East West Resort Transportation, LLC, and TMS, LLC, dba Colorado Mountain Express (CME) is a DOT-registered motor carrier of passengers providing service over regular routes and in special and charter operations. CME operates 235 vehicles and has over 20 years of experience in interstate commerce. CME's regular route operations are provided principally between the Denver International Airport in Denver, Colorado and points in Eagle County, Colorado including the Vail and Beaver Creek ski resorts, the Eagle County, Colorado Regional Airport and points in Pitkin County, Colorado, including the Aspen and Snowmass ski resorts, pursuant to certificates issued by the former Interstate Commerce Commission (ICC). Its authority to provide charter and special operations extends to all points in Colorado.

CME states that it has increasingly made use of computers in conducting its business. It makes maximum use of the Internet in its reservations, maintenance, accounting and virtually all other phases of its business. CME advises that its "goal of making maximum prudent use of computers in its business extends to its goal of ultimate digitization of all data which it both generates and receives in the ordinary course of business, with the result of CME being a 'paperless office'." CME's ultimate goal, according to its exemption application, is to conduct, to the extent possible, all of its internal operations in a digitized format.

CME states that, as a motor common carrier of passengers, it is required to comply—and does comply—with the Federal Motor Carrier Safety Regulations (FMCSRs). One specific

section of the FMCSRs—§ 391.21(b) reads: “The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him, and must contain the following information * * *.”

As one part of its goal to utilize computers in its everyday business activities, in 2006 CME contracted with a vendor to monitor the Federal driver-recordkeeping requirements with a service that helps carriers centralize and manage driver records, and standardizes company-wide transportation safety and compliance programs and resulting data. By providing proactive real-time alerts of important driver information, this system lets CME know at a glance what its compliance level is at any given time, and what work needs to be done to maintain and enhance its compliance efforts.

According to CME, one of the time-consuming drawbacks to the overall process of hiring a driver is the requirement in 49 CFR 391.21(b) of having the application signed by the individual driver applicant. CME's computer system is sophisticated and secure, and applicants who submit an application online do so by entering a user name and password that can only be known to the applicant. CME wishes to make this online application process less complicated by allowing driver-applicants to use an electronic signature, rather than having the application completed online, approved, printed, signed by the driver applicant, and then rescanned into the system.

Due to the savings involved in not maintaining large areas devoted to the storage of paper records, CME has strived to have substantially all of its passenger-service records, including its traffic data, digitized in a manner that minimizes human intervention. CME states that the potential utilization of electronic signatures would substantially improve the level of service that it can provide the public as it reduces the margin of error in its operations, which culminates in considerable cost savings to CME.

CME requests that it be granted an exemption for a period of two years from the requirement to maintain driver employment applications bearing original signatures. A copy of CME's exemption application is in the docket identified at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31316(e), FMCSA

requests public comment on CME's application for an exemption. The Agency will consider all comments received by close of business on January 30, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: December 19, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7-25318 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB Approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collection requirement (ICR) listed below has been approved by the Office of Management and Budget (OMB). This new ICR pertains to 49 CFR Part 262. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to Parts 215, 216, 219, 223, and 239. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493-6292), or Gina Christodoulou, Office of Support Systems, RAD-43, Federal Railroad Administration, 1200 New Jersey Ave., NW., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493-6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995

(PRA), Public Law No. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved in the last year: (1) OMB No. 2130-0572, Causal Analysis and Countermeasures to Reduce Rail-related Suicides (Forms FRA F 6180.125A and FRA F 6180.125B), and (2) OMB No. 2130-0573, Implementation of Program for Capital Grants for Rail Line Relocation and Improvement Projects (49 CFR 262). The expiration date for these two new collections of information is November 30, 2010.

The following information collections were re-approved: (1) OMB No. 2130-0504, Special Notice for Repairs (49 CFR part 216) (Forms FRA F 6180.8 and FRA 6180.8A). The new expiration date for this information collection is August 31, 2010. (2) OMB No. 2130-0511, Designation of Qualified Persons (49 CFR 215). The new expiration date for this information collection is May 31, 2010. (3) OMB No. 2130-0526, Control of Alcohol and Drug Use in Railroad Operations (49 CFR 219) (Forms FRA F 6180.73 and FRA F 6180.74). The new expiration date for this information collection is March 31, 2010. (4) OMB No. 2130-0545, Passenger Train Emergency Preparedness (49 CFR 223 and 239). The new expiration date for this information collection is May 31, 2010. (5) OMB No. 2130-0555, FRFB Employees Who Perform Train or Dispatching Service in the United States (49 CFR 219). The new expiration date for this information collection is August 31, 2010.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC on December 21, 2007.

D.J. Stadtler,

*Director, Office of Financial Management,
Federal Railroad Administration.*

[FR Doc. E7-25334 Filed 12-28-07; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt,
Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2008, and ending on June 30, 2008, the prompt payment interest rate and the contract disputes interest rate is 4-¾ per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Carol Brooks, Accountant, Borrowings Accounting Team, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106-1328. A copy of this Notice is available at <http://www.publicdebt.treas.gov>.

DATES: Effective January 1, 2008 to June 30, 2008.

FOR FURTHER INFORMATION CONTACT:

Veronica Lowther, Acting Director, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106-1328, (304) 480-5161; Carol Brooks, Accountant, Borrowings Accounting Team, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106-1328, (304) 480-5167; Amy Mertz Brown, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504-3715; or Brenda L. Hoffman, Attorney-Advisor, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504-3706.

SUPPLEMENTARY INFORMATION: An agency acquiring property or services from a business concern, but failing to pay for each complete delivered item of property or service by the required payment date, must pay the business concern an interest penalty, commonly known as the Prompt Payment Interest Penalty. 31 U.S.C. 3902(a). The applicable interest rate for determining this penalty is the rate established by the Secretary of the Treasury under § 12 of the Contract Disputes Act (codified at 41 U.S.C. 611) and in effect at the time the agency accrues the obligation to pay this late payment interest penalty. 31 U.S.C. 3902(a). Agencies must pay the interest penalty calculated with the

Prompt Payment Interest Rate, “for the period beginning on the day after the required payment date and ending on the date on which the payment is made.” 31 U.S.C. 3902(b). If an interest penalty is owed to a business concern because of a late payment, the penalty must be paid regardless of whether the business concern requested payment of the penalty.

An agency also must pay interest on claims found due to contractors that are submitted to procuring agencies for payment, payable for the time period between when the contracting officer receives the claim and when the procuring agency pays the claim. Contract Disputes Act § 12; 41 U.S.C. 611.

The Secretary is required to establish an interest rate for both of these purposes. 31 U.S.C. 3902(a); 41 U.S.C. 611. Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest for purposes of both Prompt Payment and the Contract Disputes Act, applicable for the period beginning January 1, 2008, and ending on June 30, 2008, is 4-¾ per centum per annum.

Kenneth E. Carfine,

Fiscal Assistant Secretary

[FR Doc. 07-6197 Filed 12-28-08; 8:45 am]

BILLING CODE 4810-39-M

Reader Aids

Federal Register

Vol. 72, No. 249

Monday, December 31, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000****Laws** **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**Privacy Act Compilation **741-6064**Public Laws Update Service (numbers, dates, etc.) **741-6043**TTY for the deaf-and-hard-of-hearing **741-6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.gpoaccess.gov/nara/index.html>Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: http://www.archives.gov/federal_register

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.**Reference questions.** Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67831-68040.....	3
68041-68470.....	4
68471-68742.....	5
68743-69136.....	6
69137-69568.....	7
69569-70218.....	10
70219-70478.....	11
70479-70762.....	12
70763-71054.....	13
71055-71198.....	14
71199-71574.....	17
71575-71742.....	18
71743-72232.....	19
72233-72562.....	20
72563-72896.....	21
72897-73250.....	26
73251-73572.....	27
73573-74152.....	28
74153-74408.....	31

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

2424.....73484

3 CFR

Proclamations:

8207.....68041

8208.....68469

8209.....69135

8210.....70761

8211.....71197

8212.....72897

8213.....73555

Executive Orders:

11582 (See 13453).....70477

11651 (See Proc.

8213).....73555

13453.....70477

5 CFR

530.....67831

575.....67831

843.....71743

850.....73573

1601.....73251

Proposed Rules:

339.....73282

2423.....72632

7 CFR

205.....69569, 70479

246.....68966

301.....69137, 70763, 72233

305.....70219

354.....70765

613.....68743

760.....72864, 72878

766.....74153

905.....68471

923.....71055

983.....69139

985.....71199

1924.....70220

1944.....70220

3550.....70220, 73252

Proposed Rules:

51.....68542

205.....73667

319.....70237

718.....71606

915.....69624

925.....70811

930.....70240

944.....69624, 70811

948.....70244

981.....73671

1412.....71606

1427.....71606

9 CFR

113.....72563

130.....70765, 71744

156.....70765

10 CFR

Ch. I.....68043

19.....68043, 72233

20.....68043, 72233

50.....68043, 71750, 72233

72.....73579, 74162

433.....72565

434.....72565

435.....72565

Proposed Rules:

2.....73676

51.....71083

60.....72522

63.....72522

72.....74209

73.....72522

74.....72522

11 CFR

104.....72899

114.....72899

12 CFR

3.....69288

25.....72571

201.....71202, 71756

202.....71056

203.....72234

208.....69288

220.....70486

225.....69288

226.....71058

228.....72571

325.....69288

345.....72571

559.....69288

560.....69288

563.....69288

563e.....72571

567.....69288

584.....72235, 73424

620.....68060

Proposed Rules:

41.....70944

222.....70944

334.....70944

544.....72264

552.....72264

571.....70944

717.....70944

1750.....68656

13 CFR

Proposed Rules:

120.....72264

121.....73285

125.....73285

127.....73285

134.....73285

14 CFR

11.....68473, 73579

13	68473
17	68473
21	73579
23	69572, 69574, 69577, 69579, 72915
25	73582, 73585
26	68618, 70486
27	73579
36	68473
39	67841, 67843, 67845, 67847, 69572, 69574, 69577, 69579, 69583, 69585, 69587, 69590, 69591, 69593, 69595, 69598, 69600, 69601, 69604, 69606, 69608, 69610, 69612, 69614, 71204, 71206, 71210, 71212, 71214, 71216, 71218, 72915, 73256, 73258, 73587
71	70767, 70768, 70769, 71060, 71757, 71758, 71759, 71761, 71762, 71764, 71765, 71766, 71767, 71768
91	68473
97	68062, 70771, 70772, 74166
121	70486
129	70486
139	68473
150	68473
193	68473
404	68473
406	68473
Proposed Rules:	
1	68763
23	68763, 72265
25	68763
39	67864, 67866, 67868, 67870, 67873, 67998, 68106, 68108, 68764, 68766, 69628, 69630, 69635, 70247, 70249, 71086, 71089, 71271, 71273, 71275, 71277, 71279, 71281, 71284, 71286, 71828, 71830, 71832, 71834, 72270, 72273, 72636, 72823, 72968, 74210
71	69638, 71606, 71607, 71608
91	68763, 72637
121	68763
125	68763
135	68763
139	68763
15 CFR	
740	70509
772	70509, 73589
806	71220, 72917
16 CFR	
Proposed Rules:	
660	70944
17 CFR	
211	74168
230	71546, 73534
239	71546, 73534
240	69554, 70450
Proposed Rules:	
150	74213
210	71610
229	71610
231	71610
239	72274
241	71610
18 CFR	
35	72239

Proposed Rules:	
284	73304
410	67875
19 CFR	
Proposed Rules:	
201	72280
210	72280
20 CFR	
401	69616
402	69616
422	73260
Proposed Rules:	
404	70527
416	72641
21 CFR	
20	69108
25	69108
201	69108, 71769, 73589
202	69108
207	69108
210	68064
211	68064
225	69108
226	69108
312	73589
314	73589
500	69108
510	68477, 69108, 72920
511	69108
515	69108
516	69108
520	68477
522	69142
558	68478, 68479, 69108, 70774, 70776
601	73589
610	73589
801	73589
807	73589
809	73589
812	73589
814	73589
1300	67850
1308	69618
1312	72921
Proposed Rules:	
133	70251
210	68111, 68113
211	68111, 68113
22 CFR	
22	72243, 74169
41	74174
51	74169
62	72245
124	71785
126	71575
127	70777
23 CFR	
630	68480
655	72574
24 CFR	
5	73484
6	73484
8	73484
15	73484
21	73484
24	73484
25	73484
26	73484
84	73484

85	73484
91	73484
92	73484
103	73484
107	73484
135	73484
200	73484
202	73484
203	73484
206	73484
245	73484
291	73484
401	73484
402	73484
570	73484
572	73484
585	73484
598	71008
941	73484
954	73484
982	73484
983	73484
1000	73484
1003	73484
1005	73484
1006	73484
3282	73484
3500	73484
25 CFR	
36	68491
Proposed Rules:	
11	71835
26 CFR	
1	70779, 71060, 71061, 71787, 72582, 72592, 72929, 74175
300	72606
301	73261, 74192
602	74175
Proposed Rules:	
1	67878, 71842, 72645, 72646, 72970, 73680, 74213, 74215
31	74233
301	74246
27 CFR	
447	72936
Proposed Rules:	
4	71289, 71290
9	71289, 71290
70	71290
28 CFR	
50	69143
29 CFR	
102	68502
1625	72938
1627	72938
1910	71061
2702	71788
4006	71222
4007	71222
4022	71071
4044	71071
Proposed Rules:	
29	71020
1910	71091, 72452, 72971
1915	72452
2550	70988
2560	71842
4041	68542

4042	68542
30 CFR	
75	71791
206	71231
701	68000
773	68000
774	68000
778	68000
843	68000
847	68000
Proposed Rules:	
75	72301
203	72648, 72652
250	72648
251	72648
256	72648
260	72652
280	72648
281	72648
290	72648
756	71291
943	71293
946	71295
31 CFR	
351	67853
353	67853
359	67853
360	67853
363	67853
32 CFR	
57	71792
68	70222
285	71793
706	72945
Proposed Rules:	
199	72307
286	71847
33 CFR	
110	70513
117	68503, 69144, 70515, 70516, 72250, 72251, 73262
161	70780
165	68504, 68506, 70780, 72251, 73263
Proposed Rules:	
117	68118, 68548
401	74247
34 CFR	
75	69145
668	72947
674	72947
682	72947
685	72947
Proposed Rules:	
8	72976
36 CFR	
7	70781
242	73426
Proposed Rules:	
7	72316
223	72319
294	73699
1193	71613
1194	71613
1281	72319
37 CFR	
382	71795
383	72253

Proposed Rules:	62.....70812, 72978	45 CFR	219.....74193
201.....70529	63.....70543	Proposed Rules:	225.....73659
38 CFR	81.....70255, 74252	16.....73708	385.....71247
3.....68507	94.....69522	81.....73708	395.....71247
17.....68070	271.....70266	160.....73708	564.....68234
39 CFR	302.....73700	1303.....73708	571.....68234, 68442
121.....72216	355.....73700	47 CFR	630.....68756
122.....72216	41 CFR	25.....70807	Proposed Rules:
40 CFR	302-4.....70234	54.....67858	380.....73226
49.....69618	Proposed Rules:	64.....70808	383.....73226
50.....71072	102-39.....70266	73.....67859, 72626	384.....73226
51.....71072, 72607	42 CFR	Proposed Rules:	571.....72326
52.....67854, 68072, 68508,	411.....68075	64.....71099	50 CFR
68511, 68515, 69148, 69621,	422.....68700	73.....67880	17.....70648, 72010, 73092
70804, 71073, 71245, 71576,	423.....68700	76.....73744	100.....73426
72256, 72607, 72617, 72948,	424.....68075	48 CFR	229.....67859, 67861, 73661,
73602	431.....68077, 73635	Ch. I.....73214, 73222	73663
62.....72953	433.....73635	11.....73215	300.....68093, 68762
63.....73180, 73611, 74088	440.....68077, 73635	22.....73218	622.....73269, 73270
65.....73625	441.....68077	23.....73215	635.....74193
81.....68515, 70222, 72948	488.....71579	32.....73219	648.....68095, 68096, 70235,
82.....73264, 74118	Proposed Rules:	39.....73215	72626, 72965, 73274, 74197,
89.....72955	422.....73708	52.....73215, 73218, 73219	74207
94.....68518	423.....73708	216.....69158	660.....68097, 69162, 71583,
97.....68515, 71576, 72256	498.....73708	227.....69159	72630
131.....70517	1001.....71868	252.....69159	679.....71601, 71802, 73665
174.....68525, 68744	1005.....73708	Proposed Rules:	Proposed Rules:
180.....68529, 68534, 68662,	43 CFR	4.....74255	17.....69034, 70269, 70284,
69150, 71077, 71798, 72622,	Proposed Rules:	8.....74255	70716, 71040, 71298
72958, 72963, 73626, 73631	2800.....70376	13.....74255	20.....71869
271.....70229	2880.....70376	17.....74255	223.....71102
300.....68075	2920.....70376	31.....72325	226.....73745
Proposed Rules:	44 CFR	32.....74255	300.....70286, 74257
9.....69522	64.....68748, 68750, 73651	52.....74255	600.....70286, 72657
50.....7148871579	67.....68768, 68769, 68784,	225.....69176	622.....68551, 73747
52.....67878, 68118, 68119,	68795, 68806, 73653, 73655,	228.....69177	648.....71315, 73304, 73749
68551, 69175, 70255, 70540,	73656	231.....69176, 69177	665.....73308
70811, 71095, 71297, 72322,	Proposed Rules:	252.....69177	679.....68810, 68833
74250	67.....68752, 73720, 73732	49 CFR	697.....70286
60.....69175		192.....70808	

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 31, 2007**AGRICULTURE DEPARTMENT****Commodity Credit Corporation**

Special programs:

Direct Farm Loan Programs; regulatory streamlining; published 11-8-07

AGRICULTURE DEPARTMENT**Farm Service Agency**

Special programs:

Direct Farm Loan Programs; regulatory streamlining; published 11-8-07
Correction; published 12-31-07

AGRICULTURE DEPARTMENT**Rural Business-Cooperative Service**

Special programs:

Direct Farm Loan Programs; regulatory streamlining; published 11-15-07

AGRICULTURE DEPARTMENT**Rural Housing Service**

Special programs:

Direct Farm Loan Programs; regulatory streamlining; published 11-15-07

AGRICULTURE DEPARTMENT**Rural Utilities Service**

Special programs:

Direct Farm Loan Programs; regulatory streamlining; published 11-15-07

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—
Refrigerant recovery and recycling equipment standards; published 11-9-07

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Nevada; published 10-31-07

Air quality implementation plans; approval and promulgation; various States:

California; published 10-31-07

North Carolina; published 10-31-07

**HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services**

Medicaid:

Medicaid Integrity Program; contractor liability limitations; published 11-30-07

**HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration**

Medical devices:

Hematology and pathology devices—
Automated blood cell separator device operating by centrifugal separation principle; reclassification; published 11-30-07

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Lockheed; published 11-14-07

Standard instrument approach procedures; published 12-31-07

**TREASURY DEPARTMENT
Internal Revenue Service**

Income taxes:

Nuclear decommissioning funds; published 12-31-07

Procedure and administration:

Census Bureau; disclosure of return information; published 12-31-07

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cherries (tart) grown in Michigan, et al.; comments due by 1-10-08; published 12-11-07 [FR E7-23907]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Equines; commercial transportation to slaughter facilities; comments due by 1-7-08; published 11-7-07 [FR E7-21896]

Plant-related quarantine, foreign:

Ya pears from China; comments due by 1-10-08; published 12-11-07 [FR E7-23957]

**COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish, crab, salmon, and scallop; comments due by 1-7-08; published 11-21-07 [FR 07-05774]

Groundfish; comments due by 1-7-08; published 12-6-07 [FR 07-05940]

Groundfish; comments due by 1-7-08; published 12-6-07 [FR 07-05943]

Magunuson-Stevens Act provisions—

Boarding ladders; comments due by 1-10-08; published 12-11-07 [FR E7-24008]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 1-7-08; published 12-21-07 [FR E7-24864]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Local Community Recovery Act of 2006; set-asides; comments due by 1-7-08; published 11-7-07 [FR 07-05482]

Safety Act; implementation; comments due by 1-7-08; published 11-7-07 [FR 07-05477]

Service Contract Act; exemption of certain service contracts; comments due by 1-7-08; published 11-7-07 [FR 07-05481]

ENERGY DEPARTMENT**Federal Energy Regulatory Commission**

Natural Gas Policy Act:

Capacity release market efficiency promotion; comments due by 1-10-08; published 11-26-07 [FR E7-22952]

ENVIRONMENTAL**PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:

Petroleum refineries; comment period extension; comments due by 1-7-08; published 12-7-07 [FR E7-23824]

Air quality implementation plans; approval and promulgation; various States:

Georgia; comments due by 1-7-08; published 12-7-07 [FR E7-23710]

Montana; comments due by 1-11-08; published 12-12-07 [FR E7-24093]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Wisconsin; comments due by 1-10-08; published 12-11-07 [FR E7-23949]

Hazardous waste program authorizations:

Rhode Island; comments due by 1-10-08; published 12-11-07 [FR E7-23946]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Oxytetracycline; comments due by 1-7-08; published 11-7-07 [FR E7-21796]

FEDERAL COMMUNICATIONS COMMISSION

Radio broadcasting:

FM translators; use by AM stations as fill-in service; comments due by 1-7-08; published 11-6-07 [FR E7-21271]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Local Community Recovery Act of 2006; set-asides; comments due by 1-7-08; published 11-7-07 [FR 07-05482]

Safety Act; implementation; comments due by 1-7-08; published 11-7-07 [FR 07-05477]

Federal Management Regulation:

Personal property replacement pursuant to exchange/sale authority; comments due by 1-10-08; published 12-11-07 [FR E7-23887]

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Drawbridge operations:

Louisiana; comments due by 1-8-08; published 11-9-07 [FR E7-21885]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Agency information collection activities; proposals, submissions, and approvals; comments due by 1-7-08; published 11-6-07 [FR 07-05499]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Local Community Recovery Act of 2006; set-asides; comments due by 1-7-08; published 11-7-07 [FR 07-05482]

Safety Act; implementation; comments due by 1-7-08; published 11-7-07 [FR 07-05477]

Service Contract Act; exemption of certain service contracts; comments due by 1-7-08; published 11-7-07 [FR 07-05481]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 1-7-08; published 11-23-07 [FR E7-22814]

Fokker; comments due by 1-10-08; published 12-11-07 [FR E7-23950]

McDonnell Douglas; comments due by 1-7-08; published 11-21-07 [FR E7-22725]

Saab; comments due by 1-9-08; published 12-10-07 [FR E7-23869]

Taylorcraft Aviation, LLC; comments due by 1-9-08; published 12-10-07 [FR E7-23860]

Airworthiness standards:

Special conditions—

ASPEN Avionics Inc.
Model EFD 1000;
comments due by 1-9-08; published 12-10-07 [FR E7-23835]

Cirrus Design Corp.
Model SR22 airplane;

comments due by 1-9-08; published 12-10-07 [FR E7-23852]

Honda Aircraft Co., Model HA-420 Hondajet; comments due by 1-9-08; published 12-10-07 [FR E7-23831]

Pilatus Aircraft Ltd.; Model PC/12/47E airplane; comments due by 1-9-08; published 12-10-07 [FR E7-23837]

Class E airspace; comments due by 1-10-08; published 12-13-07 [FR 07-06017]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Fee schedule; U.S. cash deposits or obligations offer in lieu of sureties on DOT conformance bonds; comments due by 1-7-08; published 11-21-07 [FR E7-22532]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 3648/P.L. 110-142

Mortgage Forgiveness Debt Relief Act of 2007 (Dec. 20, 2007; 121 Stat. 1803)

H.R. 365/P.L. 110-143

Methamphetamine Remediation Research Act of 2007 (Dec. 21, 2007; 121 Stat. 1809)

H.R. 710/P.L. 110-144

Charlie W. Norwood Living Organ Donation Act (Dec. 21, 2007; 121 Stat. 1813)

H.R. 2408/P.L. 110-145

To designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the "Milo C. Huempfer Department of Veterans Affairs Outpatient Clinic". (Dec. 21, 2007; 121 Stat. 1815)

H.R. 2671/P.L. 110-146

To designate the United States courthouse located at 301 North Miami Avenue, Miami, Florida, as the "C. Clyde Atkins United States Courthouse". (Dec. 21, 2007; 121 Stat. 1816)

H.R. 3703/P.L. 110-147

To amend section 5112(p)(1)(A) of title 31, United States Code, to allow an exception from the \$1 coin dispensing capability requirement for certain vending machines. (Dec. 21, 2007; 121 Stat. 1817)

H.R. 3739/P.L. 110-148

To amend the Arizona Water Settlements Act to modify the requirements for the statement of findings. (Dec. 21, 2007; 121 Stat. 1818)

H.J. Res. 72/P.L. 110-149

Making further continuing appropriations for the fiscal year 2008, and for other purposes. (Dec. 21, 2007; 121 Stat. 1819)

S. 597/P.L. 110-150

To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 21, 2007; 121 Stat. 1820)

S. 888/P.L. 110-151

Genocide Accountability Act of 2007 (Dec. 21, 2007; 121 Stat. 1821)

S. 2174/P.L. 110-152

To designate the facility of the United States Postal Service located at 175 South Monroe Street in Tiffin, Ohio, as the "Paul E. Gillmor Post Office Building". (Dec. 21, 2007; 121 Stat. 1823)

S. 2371/P.L. 110-153

To amend the Higher Education Act of 1965 to make technical corrections. (Dec. 21, 2007; 121 Stat. 1824)

S. 2484/P.L. 110-154

To rename the National Institute of Child Health and Human Development as the Eunice Kennedy Shriver National Institute of Child Health and Human Development. (Dec. 21, 2007; 121 Stat. 1826)

S.J. Res. 8/P.L. 110-155

Providing for the reappointment of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 21, 2007; 121 Stat. 1829)

Last List December 21, 2007

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. PENS cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at <http://www.gpoaccess.gov/cfr/index.html>. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is \$1499.00 domestic, \$599.60 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
1	(869-062-00001-4)	5.00	4 Jan. 1, 2007
2	(869-062-00002-2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869-062-00003-1)	35.00	1 Jan. 1, 2007
4	(869-062-00004-9)	10.00	5 Jan. 1, 2007
5 Parts:			
1-699	(869-062-00005-7)	60.00	Jan. 1, 2007
700-1199	(869-062-00006-5)	50.00	Jan. 1, 2007
1200-End	(869-062-00007-3)	61.00	Jan. 1, 2007
6	(869-062-00008-1)	10.50	Jan. 1, 2007
7 Parts:			
1-26	(869-062-00009-0)	44.00	Jan. 1, 2007
27-52	(869-062-00010-3)	49.00	Jan. 1, 2007
53-209	(869-062-00011-1)	37.00	Jan. 1, 2007
210-299	(869-062-00012-0)	62.00	Jan. 1, 2007
300-399	(869-062-00013-8)	46.00	Jan. 1, 2007
400-699	(869-062-00014-6)	42.00	Jan. 1, 2007
700-899	(869-062-00015-4)	43.00	Jan. 1, 2007
900-999	(869-062-00016-2)	60.00	Jan. 1, 2007
1000-1199	(869-062-00017-1)	22.00	Jan. 1, 2007
1200-1599	(869-062-00018-9)	61.00	Jan. 1, 2007
1600-1899	(869-062-00019-7)	64.00	Jan. 1, 2007
1900-1939	(869-062-00020-1)	31.00	Jan. 1, 2007
1940-1949	(869-062-00021-9)	50.00	5 Jan. 1, 2007
1950-1999	(869-062-00022-7)	46.00	Jan. 1, 2007
2000-End	(869-062-00023-5)	50.00	Jan. 1, 2007
8	(869-062-00024-3)	63.00	Jan. 1, 2007
9 Parts:			
1-199	(869-062-00025-1)	61.00	Jan. 1, 2007
200-End	(869-062-00026-0)	58.00	Jan. 1, 2007
10 Parts:			
1-50	(869-062-00027-8)	61.00	Jan. 1, 2007
51-199	(869-062-00028-6)	58.00	Jan. 1, 2007
200-499	(869-062-00029-4)	46.00	Jan. 1, 2007
500-End	(869-062-00030-8)	62.00	Jan. 1, 2007
11	(869-062-00031-6)	41.00	Jan. 1, 2007
12 Parts:			
1-199	(869-062-00032-4)	34.00	Jan. 1, 2007
200-219	(869-062-00033-2)	37.00	Jan. 1, 2007
220-299	(869-062-00034-1)	61.00	Jan. 1, 2007
300-499	(869-062-00035-9)	47.00	Jan. 1, 2007
500-599	(869-062-00036-7)	39.00	Jan. 1, 2007
600-899	(869-062-00037-5)	56.00	Jan. 1, 2007

Title	Stock Number	Price	Revision Date
900-End	(869-062-00038-3)	50.00	Jan. 1, 2007
13	(869-062-00039-1)	55.00	Jan. 1, 2007
14 Parts:			
1-59	(869-062-00040-5)	63.00	Jan. 1, 2007
60-139	(869-062-00041-3)	61.00	Jan. 1, 2007
140-199	(869-062-00042-1)	30.00	Jan. 1, 2007
200-1199	(869-062-00043-0)	50.00	Jan. 1, 2007
1200-End	(869-062-00044-8)	45.00	Jan. 1, 2007
15 Parts:			
0-299	(869-062-00045-6)	40.00	Jan. 1, 2007
300-799	(869-062-00046-4)	60.00	Jan. 1, 2007
800-End	(869-062-00047-2)	42.00	Jan. 1, 2007
16 Parts:			
0-999	(869-062-00048-1)	50.00	Jan. 1, 2007
1000-End	(869-062-00049-9)	60.00	Jan. 1, 2007
17 Parts:			
1-199	(869-062-00051-1)	50.00	Apr. 1, 2007
200-239	(869-062-00052-9)	60.00	Apr. 1, 2007
240-End	(869-062-00053-7)	62.00	Apr. 1, 2007
18 Parts:			
1-399	(869-062-00054-5)	62.00	Apr. 1, 2007
400-End	(869-062-00055-3)	26.00	Apr. 1, 2007
19 Parts:			
1-140	(869-062-00056-1)	61.00	Apr. 1, 2007
141-199	(869-062-00057-0)	58.00	Apr. 1, 2007
200-End	(869-062-00058-8)	31.00	Apr. 1, 2007
20 Parts:			
1-399	(869-062-00059-6)	50.00	Apr. 1, 2007
400-499	(869-062-00060-0)	64.00	Apr. 1, 2007
500-End	(869-062-00061-8)	63.00	Apr. 1, 2007
21 Parts:			
1-99	(869-062-00062-6)	40.00	Apr. 1, 2007
100-169	(869-062-00063-4)	49.00	Apr. 1, 2007
170-199	(869-062-00064-2)	50.00	Apr. 1, 2007
200-299	(869-062-00065-1)	17.00	Apr. 1, 2007
300-499	(869-062-00066-9)	30.00	Apr. 1, 2007
500-599	(869-062-00067-7)	47.00	Apr. 1, 2007
600-799	(869-062-00068-5)	17.00	Apr. 1, 2007
800-1299	(869-062-00069-3)	60.00	Apr. 1, 2007
1300-End	(869-062-00070-7)	25.00	Apr. 1, 2007
22 Parts:			
1-299	(869-062-00071-5)	63.00	Apr. 1, 2007
300-End	(869-062-00072-3)	45.00	Apr. 1, 2007
23	(869-062-00073-7)	45.00	Apr. 1, 2007
24 Parts:			
0-199	(869-062-00074-0)	60.00	Apr. 1, 2007
200-499	(869-062-00075-8)	50.00	Apr. 1, 2007
500-699	(869-062-00076-6)	30.00	Apr. 1, 2007
700-1699	(869-062-00077-4)	61.00	Apr. 1, 2007
1700-End	(869-062-00078-2)	30.00	Apr. 1, 2007
25	(869-062-00079-1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0-1.160	(869-062-00080-4)	49.00	Apr. 1, 2007
§§ 1.61-1.169	(869-062-00081-2)	63.00	Apr. 1, 2007
§§ 1.170-1.300	(869-062-00082-1)	60.00	Apr. 1, 2007
§§ 1.301-1.400	(869-062-00083-9)	47.00	Apr. 1, 2007
§§ 1.401-1.440	(869-062-00084-7)	56.00	Apr. 1, 2007
§§ 1.441-1.500	(869-062-00085-5)	58.00	Apr. 1, 2007
§§ 1.501-1.640	(869-062-00086-3)	49.00	Apr. 1, 2007
§§ 1.641-1.850	(869-062-00087-1)	61.00	Apr. 1, 2007
§§ 1.851-1.907	(869-062-00088-0)	61.00	Apr. 1, 2007
§§ 1.908-1.1000	(869-062-00089-8)	60.00	Apr. 1, 2007
§§ 1.1001-1.1400	(869-062-00090-1)	61.00	Apr. 1, 2007
§§ 1.1401-1.1550	(869-062-00091-0)	58.00	Apr. 1, 2007
§§ 1.1551-End	(869-062-00092-8)	50.00	Apr. 1, 2007
2-29	(869-062-00093-6)	60.00	Apr. 1, 2007
30-39	(869-062-00094-4)	41.00	Apr. 1, 2007
40-49	(869-062-00095-2)	28.00	7 Apr. 1, 2007
50-299	(869-062-00096-1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-062-00097-9)	61.00	Apr. 1, 2007	63 (63.1440-63.6175)	(869-062-00150-9)	32.00	July 1, 2007
500-599	(869-062-00098-7)	12.00	⁶ Apr. 1, 2007	63 (63.6580-63.8830)	(869-062-00151-7)	32.00	July 1, 2007
600-End	(869-062-00099-5)	17.00	Apr. 1, 2007	63 (63.8980-End)	(869-062-00152-5)	35.00	July 1, 2007
27 Parts:				64-71	(869-062-00153-3)	29.00	July 1, 2007
1-39	(869-062-00100-2)	64.00	Apr. 1, 2007	72-80	(869-062-00154-1)	62.00	July 1, 2007
40-399	(869-062-00101-1)	64.00	Apr. 1, 2007	81-84	(869-062-00155-0)	50.00	July 1, 2007
400-End	(869-062-00102-9)	18.00	Apr. 1, 2007	85-86 (85-86.599-99)	(869-062-00156-8)	61.00	July 1, 2007
28 Parts:				86 (86.600-1-End)	(869-062-00157-6)	61.00	July 1, 2007
0-42	(869-062-00103-7)	61.00	July 1, 2007	87-99	(869-062-00158-4)	60.00	July 1, 2007
43-End	(869-062-00104-5)	60.00	July 1, 2007	100-135	(869-062-00159-2)	45.00	July 1, 2007
29 Parts:				136-149	(869-062-00160-6)	61.00	July 1, 2007
0-99	(869-062-00105-3)	50.00	⁹ July 1, 2007	150-189	(869-062-00161-4)	50.00	July 1, 2007
100-499	(869-062-00106-1)	23.00	July 1, 2007	190-259	(869-062-00162-2)	39.00	⁹ July 1, 2007
500-899	(869-062-00107-0)	61.00	⁹ July 1, 2007	260-265	(869-062-00163-1)	50.00	July 1, 2007
900-1899	(869-062-00108-8)	36.00	July 1, 2007	266-299	(869-062-00164-9)	50.00	July 1, 2007
1900-1910 (§§ 1900 to				300-399	(869-062-00165-7)	42.00	July 1, 2007
1910.999)	(869-062-00109-6)	61.00	July 1, 2007	400-424	(869-062-00166-5)	56.00	⁹ July 1, 2007
1910 (§§ 1910.1000 to				425-699	(869-062-00167-3)	61.00	July 1, 2007
end)	(869-062-00110-0)	46.00	July 1, 2007	700-789	(869-062-00168-1)	61.00	July 1, 2007
1911-1925	(869-062-00111-8)	30.00	July 1, 2007	790-End	(869-062-00169-0)	61.00	July 1, 2007
1926	(869-062-00112-6)	50.00	July 1, 2007	41 Chapters:			
1927-End	(869-062-00113-4)	62.00	July 1, 2007	1, 1-1 to 1-10		13.00	³ July 1, 1984
30 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1-199	(869-062-00114-2)	57.00	July 1, 2007	3-6		14.00	³ July 1, 1984
200-699	(869-062-00115-1)	50.00	July 1, 2007	7		6.00	³ July 1, 1984
700-End	(869-062-00116-9)	58.00	July 1, 2007	8		4.50	³ July 1, 1984
31 Parts:				9		13.00	³ July 1, 1984
0-199	(869-062-00117-7)	41.00	July 1, 2007	10-17		9.50	³ July 1, 1984
200-499	(869-062-00118-5)	46.00	July 1, 2007	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
500-End	(869-062-00119-3)	62.00	July 1, 2007	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
32 Parts:				18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-062-00170-3)	24.00	July 1, 2007
1-39, Vol. III		18.00	² July 1, 1984	101	(869-062-00171-1)	21.00	July 1, 2007
1-190	(869-062-00120-7)	61.00	July 1, 2007	102-200	(869-062-00172-0)	56.00	July 1, 2007
191-399	(869-062-00121-5)	63.00	July 1, 2007	201-End	(869-062-00173-8)	24.00	July 1, 2007
400-629	(869-062-00122-3)	61.00	July 1, 2007	42 Parts:			
630-699	(869-062-00123-1)	37.00	July 1, 2007	1-399	(869-062-00174-6)	61.00	Oct. 1, 2007
700-799	(869-062-00124-0)	46.00	July 1, 2007	400-413	(869-060-00174-3)	32.00	Oct. 1, 2006
800-End	(869-062-00125-8)	47.00	July 1, 2007	414-429	(869-060-00175-1)	32.00	Oct. 1, 2006
33 Parts:				430-End	(869-060-00176-0)	64.00	Oct. 1, 2006
1-124	(869-062-00126-6)	57.00	July 1, 2007	43 Parts:			
125-199	(869-062-00127-4)	61.00	July 1, 2007	1-999	(869-060-00177-8)	56.00	Oct. 1, 2006
200-End	(869-062-00128-2)	57.00	July 1, 2007	1000-end	(869-060-00178-6)	62.00	Oct. 1, 2006
34 Parts:				44	(869-060-00179-4)	50.00	Oct. 1, 2006
1-299	(869-062-00129-1)	50.00	July 1, 2007	45 Parts:			
300-399	(869-062-00130-4)	40.00	July 1, 2007	1-199	(869-062-00181-9)	60.00	Oct. 1, 2007
400-End & 35	(869-062-00131-2)	61.00	⁸ July 1, 2007	200-499	(869-060-00181-6)	34.00	Oct. 1, 2006
36 Parts:				500-1199	(869-060-00182-4)	56.00	Oct. 1, 2006
1-199	(869-062-00132-1)	37.00	July 1, 2007	1200-End	(869-060-00183-2)	61.00	Oct. 1, 2006
200-299	(869-062-00133-9)	37.00	July 1, 2007	46 Parts:			
300-End	(869-062-00134-7)	61.00	July 1, 2007	1-40	(869-062-00185-1)	46.00	Oct. 1, 2007
37	(869-062-00135-5)	58.00	July 1, 2007	41-69	(869-062-00186-0)	39.00	Oct. 1, 2007
38 Parts:				70-89	(869-060-00186-7)	14.00	Oct. 1, 2006
0-17	(869-062-00136-3)	60.00	July 1, 2007	90-139	(869-062-00188-6)	44.00	Oct. 1, 2007
18-End	(869-062-00137-1)	62.00	July 1, 2007	140-155	(869-062-00189-4)	25.00	Oct. 1, 2007
39	(869-062-00138-0)	42.00	July 1, 2007	156-165	(869-060-00189-1)	34.00	Oct. 1, 2006
40 Parts:				166-199	(869-060-00190-5)	46.00	Oct. 1, 2006
1-49	(869-062-00139-8)	60.00	July 1, 2007	200-499	(869-062-00192-4)	40.00	Oct. 1, 2007
50-51	(869-062-00140-1)	45.00	July 1, 2007	500-End	(869-062-00193-2)	25.00	Oct. 1, 2007
52 (52.01-52.1018)	(869-062-00141-0)	60.00	July 1, 2007	47 Parts:			
52 (52.1019-End)	(869-062-00142-8)	64.00	July 1, 2007	0-19	(869-060-00193-0)	61.00	Oct. 1, 2006
53-59	(869-062-00143-6)	31.00	July 1, 2007	20-39	(869-060-00194-8)	46.00	Oct. 1, 2006
60 (60.1-End)	(869-062-00144-4)	58.00	July 1, 2007	40-69	(869-060-00195-6)	40.00	Oct. 1, 2006
60 (Apps)	(869-062-00145-2)	57.00	July 1, 2007	70-79	(869-060-00196-4)	61.00	Oct. 1, 2006
61-62	(869-062-00146-1)	45.00	July 1, 2007	80-End	(869-060-00197-2)	61.00	Oct. 1, 2006
63 (63.1-63.599)	(869-062-00147-9)	58.00	July 1, 2007	48 Chapters:			
63 (63.600-63.1199)	(869-062-00148-7)	50.00	July 1, 2007	1 (Parts 1-51)	(869-062-00199-1)	63.00	Oct. 1, 2007
63 (63.1200-63.1439)	(869-062-00149-5)	50.00	July 1, 2007	1 (Parts 52-99)	(869-060-00199-9)	49.00	Oct. 1, 2006
				2 (Parts 201-299)	(869-062-00201-7)	50.00	Oct. 1, 2007
				3-6	(869-060-00201-4)	34.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
7-14	(869-062-00203-3)	56.00	Oct. 1, 2007
15-28	(869-062-00204-1)	47.00	Oct. 1, 2007
29-End	(869-060-00204-9)	47.00	Oct. 1, 2006
49 Parts:			
1-99	(869-060-00205-7)	60.00	Oct. 1, 2006
100-185	(869-062-00207-6)	63.00	Oct. 1, 2007
186-199	(869-060-00207-3)	23.00	Oct. 1, 2006
200-299	(869-060-00208-1)	32.00	Oct. 1, 2006
300-399	(869-062-00210-6)	32.00	Oct. 1, 2007
400-599	(869-060-00210-3)	64.00	Oct. 1, 2006
600-999	(869-060-00211-1)	19.00	Oct. 1, 2006
1000-1199	(869-062-00213-1)	28.00	Oct. 1, 2007
1200-End	(869-062-00214-9)	34.00	Oct. 1, 2007
50 Parts:			
1-16	(869-060-00214-6)	11.00	¹⁰ Oct. 1, 2006
17.1-17.95(b)	(869-060-00215-4)	32.00	Oct. 1, 2006
17.95(c)-end	(869-060-00216-2)	32.00	Oct. 1, 2006
17.96-17.99(h)	(869-060-00217-1)	61.00	Oct. 1, 2006
17.99(i)-end and 17.100-end	(869-060-00218-9)	47.00	¹⁰ Oct. 1, 2006
18-199	(869-060-00219-7)	50.00	Oct. 1, 2006
200-599	(869-062-00221-1)	45.00	Oct. 1, 2007
600-659	(869-060-00221-9)	31.00	Oct. 1, 2006
660-End	(869-060-00222-7)	31.00	Oct. 1, 2006
CFR Index and Findings			
Aids	(869-062-00050-2)	62.00	Jan. 1, 2007
Complete 2007 CFR set	1,389.00		2007
Microfiche CFR Edition:			
Subscription (mailed as issued)	332.00		2007
Individual copies	4.00		2007
Complete set (one-time mailing)	332.00		2006
Complete set (one-time mailing)	325.00		2005

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

⁵ No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

⁶ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

⁷ No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

⁹ No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

¹⁰ No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.